

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir, Assistant City Attorney
P.O. Box 839966
San Antonio, Texas 78283

tel.: (210) 207-8946
fax: (210) 207-4004
e-mail: charles.weir@sanantonio.gov

December 12, 2013

RECEIVED

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DEC 11 2013

DEC 12 2013

OPEN RECORDS DIVISION

OPEN RECORDS DIVISION

Open Records Section
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

02-514971-13

514971

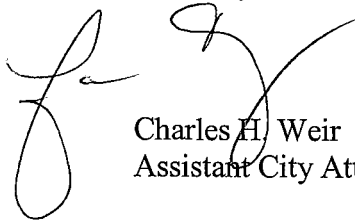
Re: Request for an Open Records Decision
Our File No.: W021448

Dear Sirs:

On November 21, 2013, the city of San Antonio received an open records request from Scott Medlock. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, and 552.153.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Charles H. Weir
Assistant City Attorney

Enclosure

cc:

Scott Medlock
The Edwards Law Firm
1101 East 11th Street
Austin, Texas 78720
(without enclosure)



City of San Antonio

Reference Number: W021448-112113

Date Submitted: 11/21/2013 3:29:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 12/9/2013 5:00:00 PM

Requestor:

Scott Medlock

The Edwards Law Firm

1101 East 11th St

Austin, TX 78720

512-623-7727

Information Requested: Police Report

Describe the document(s) you are requesting: Investigative files pertaining to Derrick Smith, Location 3700 block Tupelo Lane, on or about June 9, 2012. See request for details.

THE EDWARDS LAW FIRM

JEFF EDWARDSBOARD CERTIFIED - PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATIONJEFF@EDWARDS-LAW.COM**THE HAERDEL BUILDING**1101 EAST 11TH STREET

AUSTIN, TX 78702

TEL: 512-623-7727

FAX: 512-623-7729

SCOTT MEDLOCKSCOTT@EDWARDS-LAW.COM

November 20, 2013

Public Information Officer
Open Records Division
San Antonio Police Department
315 S. Santa Rosa
San Antonio, TX 78207
via fax: (210)207-4262

Re: Request for Copies of Public Documents

To Whom It May Concern:

I hope you are well. Pursuant to section 552.221 of the Texas Government Code, I respectfully request a certified copy of the following documents:

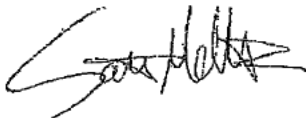
1. All police reports and investigative files pertaining to the incident in which Derrick Smith was shot at around the 3700 block of Tupelo Lane in San Antonio, Texas, on or about June 9, 2012;
2. All policies regarding barricaded suspects, and/or suspects refusing to surrender to the police for the period of June 1, 2012 to the present;
3. All policies regarding suspects threatening suicide from the period of June 1, 2012 to the present;
4. All policies regarding the use of Tasers by San Antonio police for the period of June 1, 2012 to the present;
5. All training provided to the officer that shot Mr. Smith concerning the following topics:
 - a. Handling suicidal suspects;
 - b. Accommodating individuals with mental illnesses; and,
 - c. Use of deadly force.

If electronic versions of the documents exist, I request the responsive documents in that format. If possible, please send the responsive information via email to

If the cost of producing the documents exceeds \$25, please notify me and provide an itemization of the costs.

Thank you for your time and assistance in this matter.

Sincerely,



Scott Medlock
Attorney

W021448

Facsimile Cover Sheet

To: +12102074262

Company:

Phone:

Fax: +12102074262

From: Jeff Edwards

Company: Edwards Law

Phone: (888) 325-5677 * 3

Fax: (888) 325-5677

Date: 11/20/2013

**Pages including this
cover page:** 2

Comments:

Open Records Request

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir, Assistant City Attorney
P.O. Box 839966
San Antonio, Texas 78283

tel.: (210) 207-9846

fax: (210) 207-4004

e-mail: Charles.Weir@sanantonio.gov

RECEIVED

December 13, 2013

DEC 16 2013

OPEN RECORDS DIVISION

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

02-514971-13

515357

RE: Request for Open Records Decision
Our File No.: W021448

Dear Sirs:

On November 20, 2013, the city received an open records request from Scott Medlock. A copy of that request is enclosed as Exhibit 1. The request was received after the close of business, so the date of receipt for purposes of determining the timeliness of this request is November 21. Note also that the city observed November 28 and November 29 as holidays. On December 9, the city sent a ten-day letter to your office in connection with the aforementioned request. A copy of that letter is enclosed as Exhibit 2. (The date of the ten-day letter is December 12. That is a typographical error. The letter was written and postmarked on December 9.) The city is requesting a decision from your office as to the applicability of certain exceptions to the requested information.

Mr. Medlock requested the following: (1) certain training records for San Antonio Police Department (SAPD) Officer Alejandro Chapa; (2) a certain SAPD criminal investigation file; and (3) certain SAPD policies and procedures. Copies of the records responsive to items 1 and 2 are enclosed as Exhibits 3 and 4, respectively. The city will be releasing to the requestor the information responsive to item 3, to the extent that it exists.

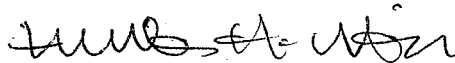
With regard to item 1, the requested information is maintained in the SAPD personnel file for Officer Chapa. The employment of sworn members of the SAPD is governed by chapter 143 of the Texas Local Government Code. Subsection 143.089(g) of that chapter prohibits the release of the personnel files maintained by the department of those employees subject to chapter 143. (As is required by subsection 143.089(g), a copy of the requestor's request has been forwarded to the San Antonio Firefighters' and Police Officers' Civil Service Commission.) The city believes

that in light of subsection 143.089(g), section 552.101 of the Texas Government Code prohibits the release of the requested information.

With regard to item 2, the requested information is related to a closed criminal investigation. The investigation did not result in a conviction or deferred adjudication. The city believes, then, that the requested information is excepted from required disclosure by section 552.108(a)(2) of the Texas Government Code.

Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles H. Weir", written in a cursive style.

Charles H. Weir
Assistant City Attorney

CHW/cah

Enclosures

cc: Scott Medlock (without enclosures)

Exhibit 1

THE EDWARDS LAW FIRM

JEFF EDWARDS

BOARD CERTIFIED - PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
JEFF@EDWARDS-LAW.COM

THE HAEMNEL BUILDING
1101 EAST 11TH STREET
AUSTIN, TX 78702
TEL: 512-623-7727
FAX: 512-623-7729

SCOTT MEDLOCK

SCOTT@EDWARDS-LAW.COM

November 20, 2013

Public Information Officer
Open Records Division
San Antonio Police Department
315 S. Santa Rosa
San Antonio, TX 78207
via fax: (210)207-4262

Re: Request for Copies of Public Documents

To Whom It May Concern:

I hope you are well. Pursuant to section 552.221 of the Texas Government Code, I respectfully request a certified copy of the following documents:

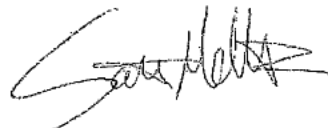
1. All police reports and investigative files pertaining to the incident in which Derrick Smith was shot at around the 3700 block of Tupelo Lane in San Antonio, Texas, on or about June 9, 2012;
2. All policies regarding barricaded suspects, and/or suspects refusing to surrender to the police for the period of June 1, 2012 to the present;
3. All policies regarding suspects threatening suicide from the period of June 1, 2012 to the present;
4. All policies regarding the use of Tasers by San Antonio police for the period of June 1, 2012 to the present;
5. All training provided to the officer that shot Mr. Smith concerning the following topics:
 - a. Handling suicidal suspects;
 - b. Accommodating individuals with mental illnesses; and,
 - c. Use of deadly force.

If electronic versions of the documents exist, I request the responsive documents in that format. If possible, please send the responsive information via email to

If the cost of producing the documents exceeds \$25, please notify me and provide an itemization of the costs.

Thank you for your time and assistance in this matter.

Sincerely,



Scott Medlock
Attorney

W021448

Exhibit 2

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir, Assistant City Attorney
P.O. Box 839966
San Antonio, Texas 78283

tel.: (210) 207-8946
fax: (210) 207-4004
e-mail: charles.weir@sanantonio.gov

December 12, 2013

Open Records Section
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

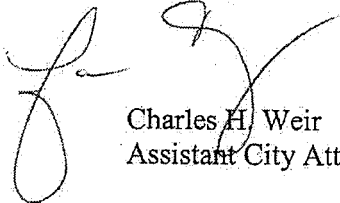
Re: Request for an Open Records Decision
Our File No.: W021448

Dear Sirs:

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I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Charles H. Weir
Assistant City Attorney

Enclosure

cc:

Scott Medlock
The Edwards Law Firm
1101 East 11th Street
Austin, Texas 78720
(without enclosure)

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir, Assistant City Attorney
P.O. Box 839966
San Antonio, Texas 78283

tel.: (210) 207-8946
fax: (210) 207-4004
e-mail: charles.weir@sanantonio.gov

April 29, 2014

RECEIVED

APR 30 2014

OPEN RECORDS DIVISION

OR-528138-14
528138

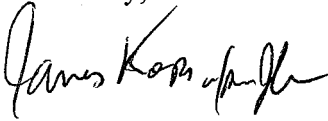
Open Records Division
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Open Records Decision
Our File No.: W026713

Dear Sirs:

On April 14, 2014, the city of San Antonio received an open records request from April Bias. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, and 552.154.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

James Kopp
Assistant City Attorney

Enclosure

JK/jlm

cc: April Bias (without enclosure)



City of San Antonio

Reference Number: W026713-041414

Date Submitted: 4/14/2014 12:10:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 4/29/2014 5:00:00 PM

Requestor:

April Bias

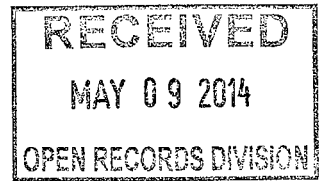
2355 Austin Hwy

San Antonio, TX 78218

210-823-5477

Information Requested: Police Records

Describe the document(s) you are requesting: All investigating records available for shooting death of Bill Jones case no 13250651 11/13/13 pictures from scene,autopsy,911 call,all records that are available, in the case.



CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir - Assistant City Attorney
PHONE NO: (210) 207-8946

Delivery Address
City Hall, 3rd Floor, P.O. Box 839966
San Antonio, Texas 78283

May 6, 2014

Amanda Crawford
Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

012-528138-14
529161

Requestor: April Bias
Organization: City of San Antonio
Date request received: April 14, 2014
COSA File No. W026713

Dear Ms. Crawford:

On April 14, 2014 the City of San Antonio received a public information request from April Bias in which she requested:

Offense Report Number(s): 13250651

The request is attached to this letter. [Attachment 1 – Copy of Request]

Also a ten day letter was sent to your office of April 29, 2014 requesting a ruling.

The aforementioned San Antonio Police Department case is a closed investigation that did not result in conviction or deferred adjudication. By this letter the city seeks to withhold some of the information within the documents under section 552.108(a)(2) of the Public Information Act. The city has submitted copies of the requested records which the city seeks to withhold and argument supporting the asserted exceptions. [Attachment 2 – Copy of Records Submitted for AG Review]

Some or all of the Requested Records are Protected under Section 552.108, the Law Enforcement Exception

Under the Public Information Act 552.108, information related to law enforcement activity is also protected. Section 552.108 provides, in relevant part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

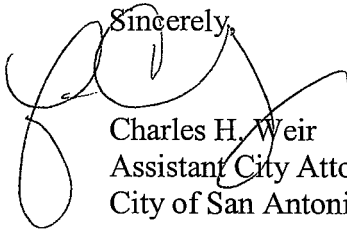
(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

Section 552.108 applies only to records that can be characterized as the records of law enforcement agencies or prosecutors. This has been defined as an agency whose primary function is to investigate crimes and enforce the criminal laws. Open Records Decision No. 493 at 2 (1988). The San Antonio Police Department's primary function is the investigation and enforcement of criminal laws.

Conclusion

The Office of the City Attorney seeks authority to withhold the enclosed records for the reasons stated in this letter brief. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles H. Weir', is written over the typed name and title.

Charles H. Weir
Assistant City Attorney
City of San Antonio

cc:

April Bias
2355 Austin Hwy
San Antonio, Texas 78218

w/o enclosures

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir, Assistant City Attorney
P.O. Box 839966
San Antonio, Texas 78283

tel.: (210) 207-8946
fax: (210) 207-4004
e-mail: charles.weir@sanantonio.gov

April 29, 2014

Open Records Division
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

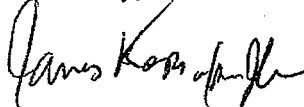
Re: Request for an Open Records Decision
Our File No.: W026713

Dear Sirs:

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I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

Enclosure

JK/jlm

cc: April Bias (without enclosure)



CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-8992 / FAX NO: (210) 207-0186

Delivery Address

City Hall, 3rd Floor, P.O. Box 839966

San Antonio, Texas 78283

May 6, 2014

Lena Dora Jones
36218 S. New Braunfels, #12B
San Antonio, Texas 78223

Via First Class Mail

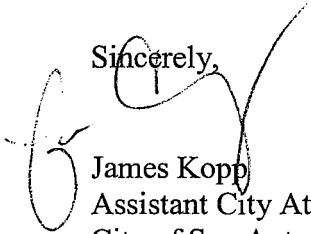
Re: Open Records Request
COSA File No. 26713

Dear Ms. Jones:

The City of San Antonio received a public information request for any and all information related to the incident in which your husband was killed (SAPD Case No. 13250651). A copy of the request for information is enclosed. The information associated with this case includes sensitive crime scene photographs of your husband. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release these photographs. Generally, the Public Information Act requires the release of requested information, but there are exceptions. As described below, as the deceased's next of kin, you have the right to file an objection to the release of these sensitive crime scene photographs by submitting a written objection to the Office of the Attorney General, referring to Section 552.1 085 of the Public Information Act, which is attached. You are not required to file a written objection to Office of the Attorney General, but if you decide not to submit such an objection, the Office of the Attorney General will presume that you have no interest in withholding the crime scene photographs from disclosure. In other words, if you fail to take timely action, the Office of the Attorney General will more than likely rule that these photographs must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you have any questions, or I can assist you in any way in filing an objection with the Office of the Attorney General, if you choose to do so, please let me know.

Sincerely,



James Kopp
Assistant City Attorney
City of San Antonio

cc:

Amanda Crawford
Office of the Attorney General
Open Government Section
P.O.Box 12548
Austin, Texas 78711*2548

(w/o enclosures)

DAVID A. ESCAMILLA
COUNTY ATTORNEY

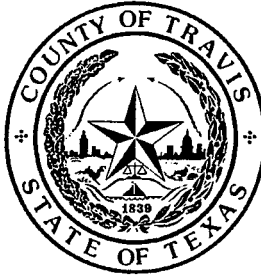
STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH STREET
GRANGER BLDG., 5TH FLOOR
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



RECEIVED

JUL 23 2014

TRANSACTIONS DIVISION
OPEN RECORDS DIVISION
JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

MARY ETTA GERHARDT

TENLEY A. ALDREDGE

DANIEL BRADFORD

ELIZABETH H. WINN

JENNIFER KRABER

† Member of the College
of the State Bar of Texas

July 23, 2014

02-541640 -14
541640

Hand Delivered

Ms. Amanda Crawford, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Requests from **Robert Alden** on 7/9/2014—Request for Ruling

Dear Ms. Crawford:

On behalf of the Travis County District Attorney's Office ("TCDA") and the Travis County Medical Examiner's Office ("TCME") and under Government Code section 552.301, we are requesting a decision regarding the status of certain information sought in the attached request. The TCDA and TCME assert that the requested information is excepted from disclosure under sections 552.101-552.153 of the Act, along with the exceptions incorporated therein. Accordingly, we are asking for a decision from your office with respect to the requested information. By copy of this letter, we are informing the requestor that we wish to withhold the requested information and that we are asking for a decision from your office.

A supplemental brief setting forth the applicability of the above-referenced exceptions and representative samples of the requested information will be submitted to your office within fifteen business days after receipt of the request.

If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,



Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosures: Request Letters

c:

Dayna Blazey
Travis County District Attorney's Office
(emailed, without enclosures)

Patty Sunderland
Travis County Medical Examiner's Office
(emailed, without enclosures)

Robert Alden
Byrd Davis Furman & Alden LLP
707 West 34th Street
Austin, TX 78705-1204
(via email to

without enclosures)

Ramiro Gonzalez

Subject: Open Records Request

From: Robby Alden

Sent: Wednesday, July 09, 2014 3:17:48 PM (UTC-06:00) Central Time (US & Canada)

To: DAOpenRecordsRequests

Subject: Open Records Request

I represent the son of John Schaefer, who was killed by Austin Police Officer Whitted on Friday, March 1, 2013. Now that the Grand Jury investigation has been completed, I hereby request the documents identified below pursuant to Chapter 552 of the Texas Government Code:

- All 911 recordings and transcripts of recordings from the morning of 3/1/2013 pertaining to 10617 Lanshire.
- All recordings, data and videos from the "Digital Mobile Audio Video" (DMAV) data from Lt. Suitt's car, unit #8611 I believe, from Lt. Suitt's interview of Officer Whitted.
- GSR reports from John Schaefer and Officer Whitted.
- The toxicology report for Officer Whitted taken after the shooting.
- Audio recording of Officer Whitted's walk through with CLEAT representation, on scene.
- All DMAV data and recordings from Officer Whitted's car, unit 8619
- Full autopsy report of John Schaefer.
- DMAV data and recordings from Officer Ramos' car related to the shooting.
- DMAV data and recordings from Officer Torres' car related to the shooting.
- Recording of Officer Whitted's interview with Det. Swann and Det. Vetrano related to the shooting.
- All squad car communication from the morning of 3/1/13 related to the shooting or Officer Whitted, including text messages and any other data or recordings.
- The administrative order delivered at St. David's Hospital by Sgt. Richard Guajardo #3440 to Officer Whitted.
- All 911 complaints from John Schaefer for the prior nine months.
- Det. Vetrano's complete investigation file.

Any orders, memoranda, or other documents generated by the Austin Police Department related to Officer Whitted and his shooting of John Schaefer.

BYRD DAVIS FURMAN & ALDEN, L.L.P.

ATTORNEYS AND COUNSELORS

EST'D 1959



707 West 34th Street, Austin, Texas 78705-1294

Don L. Davis**
dondavis@byrddavis.com

James H. Furman**
jfurman@byrddavis.com

Robert C. Alden*
ralden@byrddavis.com

Kevin O. Henrichson
khenrichson@byrddavis.com

Of Counsel
Derek L. Davis
ddavis@byrddavis.com

L. Tonnatt Byrd
(1921 - 2007)
Jack C. Eisenberg
(1927-2011)
David H. Walter
(1948 - 2003)

* Board Certified
Personal Injury Trial Law,
Texas Board of Legal
Specialization

* AV Rated by
Martindale-Hubbell

* Licensed in Texas
and Colorado

July 9, 2014

ME 13-00925

David Dolinak, MD
Chief Medical Examiner
1213 Sabine Street
Austin, TX 78701

Telecopy: 512-854-9044

Re: Autopsy report for John Schaefer

Dear Dr. Dolinak:

I represent the son of John Schaefer, who was killed by Austin Police Officer Whitted on Friday, March 1, 2013. I have previously requested your autopsy report and related records for your examination of Mr. Schaefer. The County filed objections with the Attorney General because of the pending criminal investigation of Officer Whitted. That process has now been completed with the Grand Jury's "no bill" of Officer Whitted.

Pursuant to Chapter 552 of the Texas Government Code, I am making a second request for a copy of your report, along with all notes and photographs made during the course of the examination, and any documents the examiner may have reviewed in the course of preparing the report.

9 JUL '14 PM4:01

Very truly yours,

BYRD DAVIS FURMAN & ALDEN, L.L.P.

Robert Alden
Robert Alden

Cc: John Schaefer

Elizabeth Hanshaw Winn
Assistant Travis County Attorney
P.O. Box 1748
Austin, TX 78767

PHONE: (512) 454-3751 • (800) 344-3751

FAX: (512) 451-5857

WWW.BYRDDAVIS.COM

(Listed in Martindale-Hubbell Preeminent Law Firms)

OE-841640-14
541642

RECEIVED

JUL 30 2014

DAVID A. ESCAMILLA
COUNTY ATTORNEY

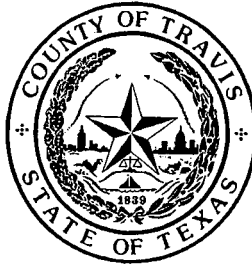
STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
GRANGER BLDG., 5TH FLOOR
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



OPEN RECORDS DIVISION
TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

MARY ETTA GERHARDT

TENLEY A. ALDREDGE

DANIEL BRADFORD

ELIZABETH H. WINN

JENNIFER KRABER

† Member of the College
of the State Bar of Texas

July 30, 2014

Hand Delivered

Ms. Amanda Crawford, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Requests from **Robert Alden** on 07/9/2014—Supplemental Brief (for
TCDA only) (File No. 537468)

Dear Ms. Crawford:

On July 23, 2014, on behalf of the Travis County District Attorney's Office ("TCDA") and the Travis County Medical Examiner's Office ("TCME"), we submitted a letter to your office asking for a ruling on this request. Below is a supplemental brief for the ruling request for TCDA only, and explains the specific exceptions in Government Code chapter 552 that we believe control over the responsibility of the TCDA to release some of the responsive information.

A portion of the requested information has already been released to the requestor, and the TCDA have no responsive information to portions of the requests, as noted below.

Specifically, the requestor has asked the Travis County District Attorney's Office for the following information:

1. All 911 recordings and transcripts of recordings from the morning of 3/1/2013 pertaining to 10617 Lanshire.
2. All recordings, data and videos from the "Digital Mobile Audio Video" (DMAV) data from Lt. Suitt's car, unit #8611 I believe, from Lt. Suitt's interview of Officer Whitted.
3. GSR reports from John Schaefer and Officer Whitted.

4. The toxicology report for Officer Whitted taken after the shooting.
5. Audio recording of Officer Whitted's walk through with CLEAT representation, on scene.
6. All DMAV data and recordings from Officer Whitted's car, unit 8619
7. Full autopsy report of John Schaefer.
8. DMAV data and recordings from Officer Ramos' car related to the shooting.
9. DMAV data and recordings from Officer Torres' car related to the shooting.
10. Recording of Officer Whitted's interview with Det. Swann and Det. Vetrano related to the shooting.
11. All squad car communication from the morning of 3/1/13 related to the shooting or Officer Whitted, including text messages and any other data or recordings.
12. The administrative order delivered at St. David's Hospital by Sgt. Richard Guajardo #3440 to Officer Whitted.
13. All 911 complaints from John Schaefer for the prior nine months.
14. Det. Vetrano's complete investigation file.

The TCDA has no responsive information to items 2 – 4, 8, 9, 11 and 12. Items 6 and 7 have already been released to the requestor and to the public at large via press packets. The following exceptions address the remainder of the requested information (items 1, 5, 10, and 13 – 14).

Some of the requested information is excepted from disclosure under section 552.108.

Section 552.108 of the Government Code states in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

- (4) it is information that:

- (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

.....

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's entire file is necessarily a request for work product because "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380 (quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding)).

In this instance, the requestor seeks 14 categories of information, as described above. We believe that the request essentially encompasses a request for the TCDA's entire prosecution file. The requested information was created or assembled by a prosecutor in anticipation of or in the course of preparing for criminal litigation; in addition, *Curry* provides that the release of the requested information would reveal the mental impressions or legal reasoning of prosecutors in the TCDA. Accordingly, we believe that the TCDA may withhold the requested information pursuant to subsections (a)(4) and (b)(3) of section 552.108 of the Government Code. To the extent that your office finds that *Curry* is not applicable, we assert in the alternative that all prosecutor notes are excepted from disclosure under subsections (a)(4) and (b)(3) because they were prepared by a prosecutor in anticipation of or in the course of preparing for criminal litigation and contain the prosecutor's mental impressions. We have sent a representative sample for your review.

In the alternative, some of the requested information may be withheld under Government Code section 552.108(a)(2).

Government Code section 552.108 states in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Here, the requested information is related to an investigation that did not result in conviction or deferred adjudication; the TCDA objects to the information's release. Accordingly, we assert that, with the exception of basic information and the information already released, this information may be withheld under Government Code section 552.108(a)(2). We have sent a representative sample for your review.

In conclusion, we ask that you rule on whether the enclosed information must be released to the requestor. If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,



Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosures: request letter, requested information, representative samples.

c:

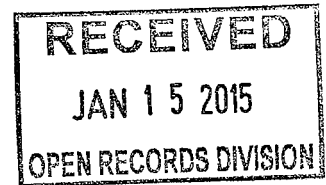
Dayna Blazey
Travis County District Attorney's Office
(emailed, without enclosures)

Robert Alden
Byrd Davis Furman & Alden LLP
707 West 34th Street
Austin, TX 78705-1204
(via email to

without enclosures)



SHAREN WILSON
Criminal District Attorney
Tarrant County



02-557232-15
557232

January 13, 2015

Honorable Ken Paxton
Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

CM/RRR #7013 1090 0000 0625 8620

Re: Public Information Request Received From Pamela A. McGee

Dear General Paxton:

Pursuant to TEX. GOV'T CODE ANN. §552.301 (Vernon 2012), the Tarrant County Criminal District Attorney's Office will be seeking a Texas Attorney General's decision regarding a public information request received on December 29, 2014; thereby, making the response to the Requestor and/or submission of a brief to your office due on Tuesday, January 13, 2015.¹ See Attachment No. 1. This Office believes that portions of the information sought may be exempt from public disclosure pursuant to Sections 552.022, 552.0225, 552.026, 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153 and 552.154 of the TEXAS PUBLIC INFORMATION ACT. By copy of this letter, this Office is informing the Requestor and your office of its intention to seek an Attorney General's ruling on this matter.

In light of this request for an extension, on or before **Wednesday, January 21, 2015**, this Office will:²

¹ Please note that all Tarrant County offices were closed for business on Thursday, January 1, 2015, in observation of New Year's Day. Therefore, the deadline to respond to the Requestor is January 13th instead of January 12th.

² Please note that all Tarrant County offices are closed for business on Monday, January 19th, 2015, in observation of Martin Luther King, Jr. Day. Therefore, the deadline to submit this Office's brief is January 21st instead of January 20th.

Honorable Ken Paxton
Re: PIR – Request (McGee)
January 13, 2015
Page 2

- (1) submit to the attorney general:
 - (A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
 - (B) a copy of the written request for information;
 - (C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and
 - (D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and
- (2) label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

See TEX. GOV'T CODE ANN. See Section 552.301(e) (Vernon 2012).


RELEASE OF INFORMATION

Lastly, all publicly available information is being released to the Requestor. *See Attachment No. 2.*

If you should have any questions, please feel free to contact me at (817) 884-1233 or via email at adfourt@tarrantcountytx.org.

Sincerely,

SHAREN WILSON
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

Ashley D. Fourt w/permission
ASHLEY D. FOURT
Assistant Criminal District Attorney 

ADF/apc

Attachment No. 1 – *Copy of Public Information Request*

Attachment No. 2 – *Public Information Released to Requestor*

Honorable Ken Paxton
Re: PIR – Request (McGee)
January 13, 2015
Page 3

cc w/att. (Attachment No. 2 only):

Ms. Pamela A. McGee (*Requestor*)
VIA EMAIL –

Christina R. Sims

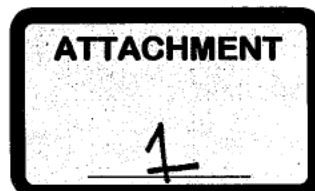
From: Ashley D. Fourt
Sent: Monday, December 29, 2014 10:16 AM
To: Christina R. Sims
Subject: Fwd: Records death of jeremy Tyler McGee

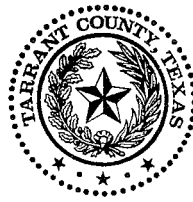
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Begin forwarded message:

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Including (2) 911 Calls ...made by Pam McGee
1.) Dated 10/3/13.
2.) Dated 10/17/13.
Also:
Including Video dated 11/23/13.
Thank you very much,
Pamela A. McGee

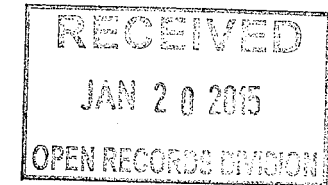




TARRANT COUNTY

OFFICE OF THE
CRIMINAL DISTRICT ATTORNEY
www.tarrantda.com

JOE SHANNON, JR.
CRIMINAL DISTRICT ATTORNEY
817/884-1400



TIM CURRY CRIMINAL JUSTICE CENTER
401 W. BELKNAP
FORT WORTH, TX 76196-0201

January 15, 2015

OR-557232-15

557567

Honorable Ken Paxton
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

C.M./R.R.R. #7010 2780 0002 5457 4028

Re: Public Information Request from Pamela A. McGee

Dear General Paxton:

On December 29, 2014, the Tarrant County Criminal District Attorney's Office received a public information request seeking information concerning the Tarrant County Grand Jury death investigation of Jeremy Tyler McGee. Please note the date of receipt is noted on the face of the request. This Office's response to the Requestor and/or submission of a brief to your office was due on Tuesday, December 13th, 2014.¹ See a copy of the request attached as Exhibit A. On that date, this Office submitted an extension letter in connection with this request. See copy of said correspondence attached as Exhibit B. This Office believes that the information sought by the Requestor may be withheld under Sections 552.101, 552.108, 552.117, 552.1175, 552.119, 552.130, 552.136 and 552.147 of the TEXAS GOVERNMENT CODE.

First, this Office seeks to withhold the information sought pursuant to Section 552.108 of the ACT. Specifically, Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from required public disclosure if it is information that "relates to an investigation that did not result in a conviction or deferred adjudication." In this case, the requested information pertains to the Grand Jury death investigation of Jeremy Tyler McGee. However, on December 12, 2014, the Tarrant County Grand Jury returned a "No Bill"; thus declining to indict the police officer who shot Mr. McGee to protect his fellow officers. Because (1) no criminal case was ever filed against the officer, (2) the officer was never convicted or placed on deferred adjudication in connection with this offense and (3) since there is no statute of limitations on the

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Honorable Ken Paxton
Re: PIR – McGee
January 15, 2015
Page 2

criminal offense of 'Murder,' this Office seeks to withhold all enclosed records in its entirety under Section 552.108 of the ACT.²

Second, this Office believes that any and all TCIC/NCIC criminal history information and/or criminal history compilation contained in the prosecutor's file must be withheld pursuant to Section 552.101 of the ACT. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In this case, the file contains criminal history information pertaining to certain individuals that was retrieved from state and/or national law enforcement criminal databases and is confidential by law. More importantly, any person who knowingly or intentionally provides a person with a copy of a person's criminal history record obtained from a law enforcement agency commits a criminal offense pursuant to Section 411.085 of the TEXAS GOVERNMENT CODE. Therefore, this information must be withheld under the ACT.

Third, this Office seeks to withhold any and all social security numbers, drivers' license and personal identification records pursuant to Sections 552.101, 552.130 and 552.147 of the ACT. A person's social security number is confidential if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1990. See ORD-622 (1994). Also, a person's drivers license information is made confidential by TEXAS TRANSPORTATION CODE, Section 521.052(a) where an individual has filed a request to protect against disclosure with DPS, such information cannot be disclosed. For these reasons, this Office believes this information is excepted from required public disclosure under the ACT.

Fourth, Sections 552.117 and 552.1175 of the ACT except from disclosure certain personal information related to a peace officer. Information contained within the records being provided to you fall within these exceptions and should be withheld from public disclosure pursuant to the ACT.

Fifth, Section 552.119(a) of the ACT excepts from public disclosure images of peace officers. Within Exhibit D, are images of the police officer(s) that were involved in this shooting incident. This Office believes that the release of said photos could endanger the life or physical safety of the officer and therefore should not be released pursuant to 552.119(a) of the ACT.

Sixth, portions of the requested records contain financial information and may be excepted from public disclosure pursuant to Sections 552.101 and 552.136(b) of the ACT provides that ". . . a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is

² Also, the Fort Worth Police Department has requested that the records sought by the Requestor be withheld pursuant to Section 552.108 of the ACT. See Exhibit C.

Honorable Ken Paxton
Re: PIR – McGee
January 15, 2015
Page 3

confidential.” Therefore, this Office seeks to withhold the portion of the records containing such financial information under Sections 552.101 and 552.136(b) of the ACT.

Finally, the information sought contains copies of autopsy photographs. Section 552.101 excepts from disclosure the “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In this case, the Requestor seeks information which contains autopsy photographs which are excepted from required public disclosure under the ACT, as well as Article 49.25, Section 11 of the CODE OF CRIMINAL PROCEDURE. However, this Office recognizes that the Requestor is the mother of the deceased. Thus, upon receipt of a properly executed release and payment, the autopsy photographs will be made available to the Requestor. In the interim, this Office maintains that all autopsy photographs of Mr. McGee must be withheld under Section 552.101 of the ACT and Article 49.25 of the CODE OF CRIMINAL PROCEDURE.

The documents sought by the Requestor are attached as Exhibit D. Please note that due to the volume of the records sought, a representative sample of certain documents is being submitted for your review and marked for reference. This letter will serve as notice to the Requestor that this Office is seeking a ruling regarding this request.

Thank you for your attention to this matter and I may be reached at (817) 884-1233 if you have any questions.

Sincerely,

SHAREN WILSON
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

A handwritten signature in black ink, appearing to read "Ashley D. Fourt", with a large, stylized loop at the end.

ASHLEY D. FOURT
Assistant Criminal District Attorney

ADF/psm
Attachments (Exhibits A - D)

Honorable Ken Paxton
Re: PIR – McGee
January 15, 2015
Page 4

cc w/atts. (Ex. A & B only):

Ms. Pamela McGee
1225 Hodgson Street
Fort Worth, Texas 76115
VIA FIRST-CLASS U.S. MAIL
& E-MAIL -

cc w/o atts.:

Ms. Marsha Adams
Fort Worth Police Department
VIA E-MAIL

Christina R. Sims

From: Ashley D. Fourt
Sent: Monday, December 29, 2014 10:16 AM
To: Christina R. Sims
Subject: Fwd: Records death of jeremy Tyler McGee

Sent from my iPhone

Begin forwarded message:

From: Pam McGee
Date: December 29, 2014 at 10:06:34 AM CST
To: "Ashley D. Fourt" <ADFourt@tarrantcountytexas.gov>
Subject: Records death of jeremy Tyler McGee

I want ALL public records on the death of jeremy Tyler McGee.

Birthday 7/25/ 89- Death 11/23/13

Including (2) 911 Calls ...made by Pam McGee

1.) Dated 10/3/13.

2.) Dated 10/17/13.

Also:

Including Video dated 11/23/13.

Thank you very much,

Pamela A. McGee





SHAREN WILSON
Criminal District Attorney
Tarrant County

January 13, 2015

Honorable Ken Paxton
Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

CM/RRR #7013 1090 0000 0625 8620

Re: Public Information Request Received From Pamela A. McGee

Dear General Paxton:

Pursuant to TEX. GOV'T CODE ANN. §552.301 (Vernon 2012), the Tarrant County Criminal District Attorney's Office will be seeking a Texas Attorney General's decision regarding a public information request received on December 29, 2014; thereby, making the response to the Requestor and/or submission of a brief to your office due on Tuesday, January 13, 2015.¹ See Attachment No. 1. This Office believes that portions of the information sought may be exempt from public disclosure pursuant to Sections 552.022, 552.0225, 552.026, 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153 and 552.154 of the TEXAS PUBLIC INFORMATION ACT. By copy of this letter, this Office is informing the Requestor and your office of its intention to seek an Attorney General's ruling on this matter.

In light of this request for an extension, on or before **Wednesday, January 21, 2015**, this Office will:²

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Honorable Ken Paxton
Re: PIR – Request (McGee)
January 13, 2015
Page 2

- (1) submit to the attorney general:
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 - (B) a copy of the written request for information;
 - (C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and
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- (2) label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

See TEX. GOV'T CODE ANN. See Section 552.301(e) (Vernon 2012).


RELEASE OF INFORMATION

Lastly, all publicly available information is being released to the Requestor. *See Attachment No. 2.*

If you should have any questions, please feel free to contact me at (817) 884-1233 or via email at adfourt@tarrantcountytx.org.

Sincerely,

SHAREN WILSON
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

Ashley D. Fourt w/permission
ASHLEY D. FOUNT
Assistant Criminal District Attorney 

ADF/apc

Attachment No. 1 – *Copy of Public Information Request*

Attachment No. 2 – *Public Information Released to Requestor*

Honorable Ken Paxton
Re: PIR – Request (McGee)
January 13, 2015
Page 3

cc w/att. (Attachment No. 2 only):

Ms. Pamela A. McGee (*Requestor*)
VIA EMAIL –

Christina R. Sims

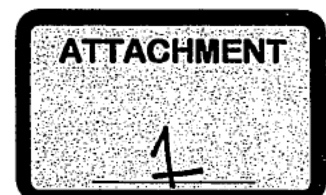
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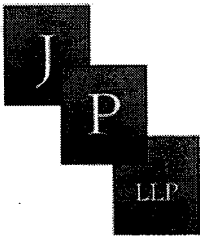
Ashley D. Fourt

From: Adams, Marsha <Marsha.Adams@fortworthtexas.gov>
Sent: Friday, January 02, 2015 1:34 PM
To: Polly S. Maxwell
Cc: Ashley D. Fourt
Subject: RE: OR Request re: Officer Involved Shooting - 3200 Portales Road, 13-I-013-TOD

The FWPD would ask that you use the exception which relates to case not prosecuted in order to preserve documents in this request. Should you have any questions, please feel free to contact me.



Andrew P. Johnson III
Alan P. Petrov



JOHNSON PETROV LLP

ajohnson@johnsonpetrov.com
apetrov@johnsonpetrov.com

January 21, 2015

VIA E-FILE

Open Records Division, MC-014
Office of the Attorney General of the State of Texas
209 West 14th Street
Austin, Texas 78701

RE: Request for Attorney General Decision Pursuant to Section 552.301 of the Texas
Public Information Act (the "Act")

Dear Sir or Madam:

On January 12, 2015, the City of Hedwig Village, Texas (the "City") received a written request, attached hereto as **Exhibit "A,"** from Mr. Scott Hooper for certain information pursuant to the Act. Specifically, Mr. Hooper has requested a copy of various information associated with a police report. Certain information responsive to Mr. Hooper's request is generally considered to be public information under the Act and has already been released. However, after reviewing other information pertinent to his request, there appears to be information that is excepted by the Act. More specifically, but not by way of limitation, the City notes the following exceptions: Section 552.101, Certain Confidential Information, and Section 552.108, Certain Law Enforcement Information.

The City is hereby requesting that the Office of the Attorney General make a determination pursuant to Section 552.301 of the Act with respect to the requested information. By separate correspondence and in compliance with the requirements of Section 552.301 of the Act, the City shall be submitting, in writing, copies of the information in question and written comments stating the reasons why the above noted exceptions apply.

Please feel free to contact me at (713) 489-8977 should you need any further information regarding this request.

Sincerely,

Alan P. Petrov, City Attorney
City of Hedwig Village, Texas

APP:mlr
Enclosure

cc: Mr. Scott Hooper (w/o enclosure)
Ms. Beth Staton, City Administrator, City of Hedwig Village (w/o enclosure) [via email]

December 9, 2014

Hedwig Village Police Department
Public Records Department
9000 Gaylord
Houston, TX 77024

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

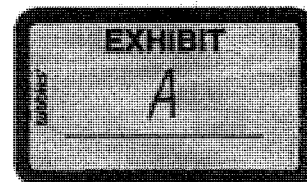
The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

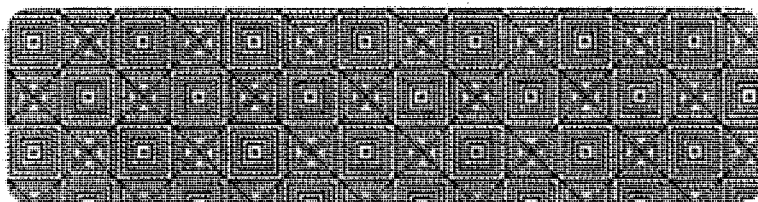
Respectfully,

Scott A. Hooper

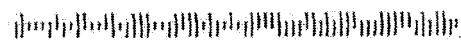


Hooper
2929 Allen Pkwy, 39th FL
Houston, TX 77019

RECEIVED
JAN 12 2013



77024290800





JOHNSON PETROV
LLP

1001 McKinney Street, Suite 1000
Houston, Texas 77002-6424

T: (713) 489-8977

F: (713) 358-3530

ajohnson@johnsonpetrov.com

apetrov@johnsonpetrov.com

February 2, 2015

Via E-Filing

Open Records Division, MC-014
Office of the Attorney General
209 West 14th Street
Austin, Texas 78701

Re: City of Hedwig Village, Texas (the "City"), Texas; Supplement to Request for Attorney General Decision Pursuant to Section 552.301 of the Texas Public Information Act (the "Act"); ID# 557744

Dear Sir or Madam:

By letter dated January 21, 2015, the City submitted to your office a request for a determination regarding a request for public information received by the City on January 12, 2015 from Mr. Scott Hooper (the "Requestor"). For your reference, a copy of the original correspondence and the written request is enclosed herewith as Exhibit "A."

This correspondence shall serve as the supplemental letter to my original correspondence mentioned above, providing the arguments why the stated exceptions apply and copies of the specific information requested. Enclosed herewith as Exhibit "B," is a copy of all of the information contained in the City's Police file responsive to Mr. Hooper's request.

Upon review of the responsive information, it is our opinion that the information is excepted from disclosure pursuant to Section 552.108(a)(2) of the Act, which provides in pertinent part that "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: ... (2) it is information that that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication." The information requested is maintained by the City's Police Department and the responsive information relates to an incident that involved a shooting by a police officer of the City in 2014. The incident report, pages one and two of Exhibit "B," and the grand jury's disposition of the matter,

Open Records Division, MC-014
February 2, 2015

the page three of Exhibit "B," have been released to the Requestor as information that is generally considered to be public. The original suspect is now deceased and, as evidenced by the grand jury determination; the investigation of the officer is concluded. As such, neither investigation resulted in a conviction or deferred adjudication and both investigations are now closed. As a result, Section 552.108(a)(2) is applicable. *See* Generally Open Records Rulings OR2004-5806 and OR2012-03507.

Should you have additional questions regarding this matter, please feel free to contact me at (713) 489-8977.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Petrov', with a long horizontal flourish extending to the right.

Alan P. Petrov, Attorney
City of Hedwig Village, Texas

APP/mlr
Enclosures

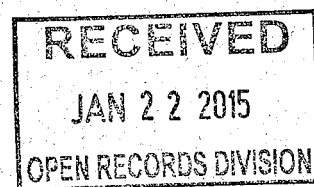
cc: Mr. Scott Hooper (w/o enclosure)

Ms. Beth Staton, City Administrator, City of Hedwig Village (w/o enclosure) via e-mail



16055 Space Center Blvd.
Suite 150
Houston, Texas 77062

281.480.1211 tel.
281.480.1210 fax



DR-557914-15
557914

January 20, 2015

**VIA CERTIFIED MAIL
RETRUN RECEIPT REQUESTED
7014 1200 0001 9184 1885**

Attorney General Ken Paxton
Open Records Division
P.O. Box 12548
Austin, Texas 78711

RE: Open Records Request for Information to the City of South Houston, Texas.

Dear General Paxton:

The following documents are enclosed for your review and consideration in the above-referenced matter:

- (1) The City of South Houston's (hereinafter referred to as "City") response to said Request, objecting to all information and identifying the basis for which the City deems the data to be exempt.
- (2) City's three (3) sets of documents responsive to the request (Exhibit B, C and D, respectively).
- (3) Copy of Scott Hooper's open records request received dated December 9, 2014 but received by the City on January 8, 2015 (Exhibit A).

REQUEST

The City respectfully requests an open records determination as to whether the documents must be produced and/or furnished.

BACKGROUND INFORMATION AND EXEMPTIONS

The identity of the requestor and the documents requested shall be identified below. The below-described objections give rise to the City's belief that the documents in its possession are exempt from public disclosure.

OPEN RECORDS REQUEST

- 1) Scott Hooper's request is dated December 9, 2014; the request was received by the City on January 8, 2015.

See Mr. Hooper's request attached as Exhibit A.

CITY'S OBJECTION

The City objects to the disclosure of the following information:

Pursuant to Section 552.108 of the Texas Government Code, the City believes that the documents attached hereto are exempt from public disclosure.

Section 552.108 states the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detention, investigation, or prosecution of crime is excepted from the requirement of Section 552.021 if:
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecuting is excepted from the requirements of Section 552.001 if:
 - (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication.

The fact is that the documents in Exhibit B requested to be disclosed are confidential and exempt from disclosure pursuant to Section 552.108 of the Texas Government Code because the information requested is being held by the South Houston Police Department's law enforcement agency and deals with the detection, investigation or prosecution of a crime. All the attached documents relate to a prior criminal investigation in which the Officer made the basis of the documents was no billed by a grand jury. The investigation and prosecution did not result in a conviction or deferred adjudication for the Officer. The documents are exempt from public disclosure.

Similarly, the documents in Exhibit B requested to be disclosed are confidential and exempt from disclosure pursuant to Section 552.108 of the Texas Government Code because the information requested is part of an internal record or notation held by the South Houston Police Department's

law enforcement agency and deals with the detection, investigation or prosecution of crime. As shown above, all the attached documents relate to a prior criminal investigation in which the Officer made the basis of the documents was no billed by a grand jury. The investigation and prosecution did not result in a conviction or deferred adjudication for the Officer. The documents are exempt from public disclosure.


The fact is that the documents in Exhibit C requested to be disclosed are confidential and exempt from disclosure pursuant to Section 552.108 of the Texas Government Code because the information requested is being held by the South Houston Police Department's law enforcement agency and deals with the detection, investigation or prosecution of a crime. All the attached documents relate to prior criminal investigation in which the Officer made the basis of the documents was no billed by a grand jury. The investigation and prosecution did not result in a conviction or deferred adjudication for the Officer. The documents are exempt from public disclosure.

Similarly, the documents in Exhibit C requested to be disclosed are confidential and exempt from disclosure pursuant to Section 552.108 of the Texas Government Code because the information requested is part of an internal record or notation held by the South Houston Police Department's law enforcement agency and deals with the detection, investigation or prosecution of crime. As shown above, all the attached documents relate to prior criminal investigation in which the Officer made the basis of the documents was no billed by a grand jury. The investigation and prosecution did not result in a conviction or deferred adjudication for the Officer. The documents are exempt from public disclosure.

The fact is that the documents in Exhibit D requested to be disclosed are confidential and exempt from disclosure pursuant to Section 552.108 of the Texas Government Code because the information requested is being held by the South Houston Police Department's law enforcement agency and deals with the detection, investigation or prosecution of a crime. All the attached documents relate to prior criminal investigation in which the Officer made the basis of the documents was no billed by a grand jury. The investigation and prosecution did not result in a conviction or deferred adjudication for the Officer. The documents are exempt from public disclosure.

Similarly, the documents in Exhibit D requested to be disclosed are confidential and exempt from disclosure pursuant to Section 552.108 of the Texas Government Code because the information requested is part of an internal record or notation held by the South Houston Police Department's law enforcement agency and deals with the detection, investigation or prosecution of crime. As shown above, all the attached documents relate to prior criminal investigation in which the Officer made the basis of the documents was no billed by a grand jury. The investigation and prosecution did not result in a conviction or deferred adjudication for the Officer. The documents are exempt from public disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Gregg", with several overlapping loops and a long horizontal stroke extending to the right.

Christopher Gregg

CAG/

Assistant City Attorney

City of South Houston, Texas

Enclosures

cc: *City of South Houston, Texas*

Scott Hooper

2929 Allen Parkway, 39th Floor

Houston, Texas 77019

EXHIBIT A

December 9, 2014

South Houston Police Department
Public Records Department
1023 Dallas Street
South Houston, TX 77587

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

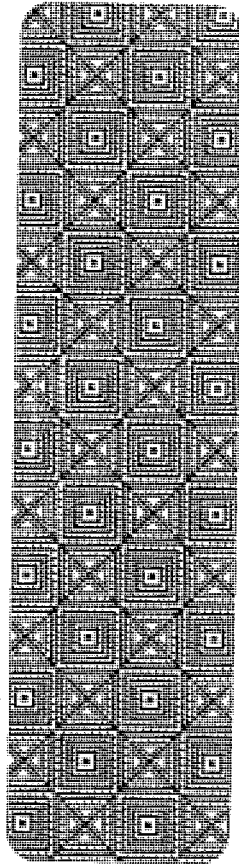
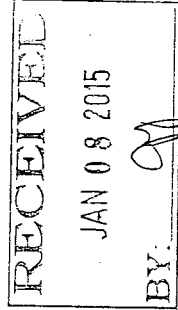
Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

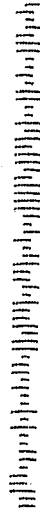
Respectfully,

Scott A. Hooper.

Hooper
2929 Allen Pkwy, 39th FL
Houston, TX 77019



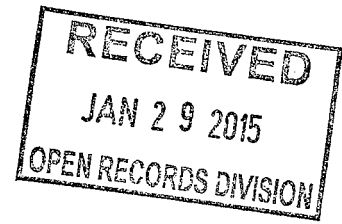
77587990629





CITY OF SUGAR LAND

January 27, 2015



212-558800-15
558800

Ken Paxton
Attorney General
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

Re: Public Information Request for Records related to Officer Involved Shootings

Dear Mr. Paxton:

On January 12, 2015¹, the City of Sugar Land received a Request for Information from Scott Hooper requesting a number of documents related to officer involved shootings. A representative sample of the responsive information is attached as Exhibit "B". A true and correct copy of Mr. Hooper's request is attached as Exhibit "A".

Pursuant to Section 552.301 of the Public Information Act, Chapter 552, Texas Government Code, I am requesting on behalf of the City of Sugar Land your opinion as to whether the requested information falls within one of the exceptions to the Act.

SECTION 552.108 EXEMPTION

Section 552.108(a)(2) exempts from public disclosure information that deals with the detection, investigation, or prosecution of crime that did not result in conviction or deferred adjudication. SLPD case #'s 09-4842/4846, 13-2125 and 14-4036 did not result in convictions or deferred adjudications.

Thank you for your consideration of this request. I may be reached at (281) 275-2715 if you have questions concerning this request.

Sincerely,

Meredith Riede

Meredith Riede,
City Attorney

¹ City officers were closed January 19, 2015 in observance of Dr. Martin Luther King's birthday

Ken Paxton, Attorney General
Office of the Attorney General
January 27, 2015
Page 2

Enclosures

Exhibit A: Request for information from Scott Hooper received January 12, 2015
Exhibit B: Representative sample of documents from Sugar Land Police Department case
nos. 09-4842/4846, 13-2125 and 14-4036

xc: Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019
(w/o exhibits)

December 9, 2014

Sugar Land Police Department
Public Records Department
PO BOX 110
Sugar Land, TX 77478

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper

RECEIVED
SLPD RECORDS

JAN 12 2015
BY QU 7521

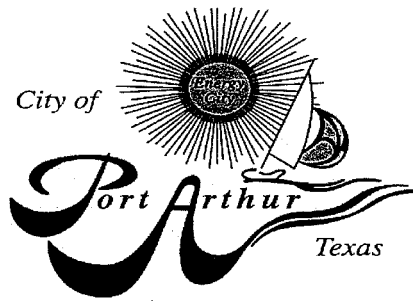
"A"

Exhibit

"B"

DELORIS "BOBBIE" PRINCE, MAYOR
DERRICK FREEMAN, MAYOR PRO TEM

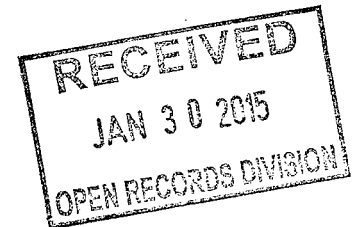
COUNCIL MEMBERS:
RAYMOND SCOTT, JR.
TIFFANY HAMILTON
MORRIS ALBRIGHT III
STEPHEN A. MOSELY
WILLIE "BAE" LEWIS, JR.
ROBERT E. WILLIAMSON
KAPRINA RICHARDSON FRANK



OR-558963-15
558963

VAL TIZENO
CITY ATTORNEY

January 26, 2015



VIA CERTIFIED MAIL #7012 3460 0000 1968 2092

The Honorable Ken Paxton
Attorney General of Texas
ATTN: Open Records Division
209 West 14th Street
Price Daniels Building
Austin, TX 78701

Re: Public Information Act Request of Scott A. Hooper
- dated December 9, 2014, but not received by the
Port Arthur Police Department until January 9, 2015

Dear Mr. Paxton:

Please find enclosed the Public Information Act request of Scott A. Hooper dated December 9, 2014, but not received by the Port Arthur Police Department until January 9, 2015.

Mr. Hooper has requested access to the following information:

"...the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.

2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The information requested should be withheld from disclosure pursuant to Section 552.108 (a)(2) and 552.108 (b)(2) of the Government Code, which provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from the requirements of Section 552.021 if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Additionally, the information requested should be withheld from disclosure pursuant to Section 552.108 (b)(2) of the Government Code, which provides:

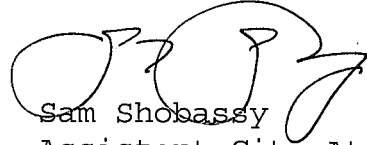
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for the internal use in matters relating to law enforcement or prosecution is excepted from the requirements of 552.021 if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

It is City of Port Arthur's contention the requested records should be withheld as they are all part of completed investigations which did not result in convictions or deferred adjudications. Included within each incident pertaining to the request are the results of a grand jury.

The City of Port Arthur respectfully requests an Attorney General Opinion regarding the item that we believe must be withheld, pursuant to Section 552.301 Government Code. If you have any questions, please feel free to contact me. I can be reached at (409) 983-8125 or via facsimile at (409) 983-8124.

Sincerely,



Sam Shobassy
Assistant City Attorney

SS:gt

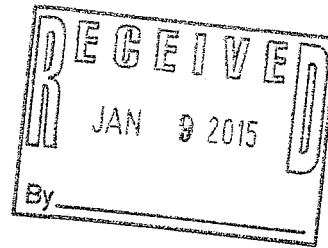
Enclosures

cc: VIA CERTIFIED MAIL - RRR# 7012 3460 0000 1968 2108
Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Mark Blanton
CHIEF OF POLICE

Sherri Bellard
CITY SECRETARY

December 9, 2014



Port Arthur Police Department
Public Records Department
P. O. Box 1089
Port Arthur, TX 77641

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper



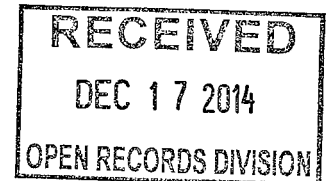
CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
Charles H. Weir – Assistant City Attorney
PHONE NO: (210) 207-8946

Delivery Address
City Hall, 3rd Floor, P.O. Box 839966
San Antonio, Texas 78283

December 16, 2014

Amanda Crawford
Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548



92-554795-14
554795

Requestor: Rodolfo Lopez
Organization: City of San Antonio
Date request received: December 8, 2014
COSA File No. W044993

Dear Ms. Crawford:

On December 16, 2014 the City of San Antonio received a public information request from Rodolfo Lopez in which he requested:

Offense Report Number(s):13046961

The request is attached to this letter. **[Attachment 1 – Copy of Request]**

By this letter the city seeks to withhold some of the information within the documents under section 552.108(a)(2) of the Public Information Act. [Indicate if the Requestor has received a copy of the BASIC information. Also indicate anything else the city is going to or has already released] The city has submitted copies of the requested records which the city seeks to withhold and argument supporting the asserted exceptions. **[Attachment 2 – Copy of Records Submitted for AG Review]**

Some or all of the Requested Records are Protected under Section 552.108, the Law Enforcement Exception

Under the Public Information Act 552.108, information related to law enforcement activity is also protected. Section 552.108 provides, in relevant part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

Section 552.108 applies only to records that can be characterized as the records of law enforcement agencies or prosecutors. This has been defined as an agency whose primary function is to investigate crimes and enforce the criminal laws. Open Records Decision No. 493 at 2 (1988). The San Antonio Police Department's primary function is the investigation and enforcement of criminal laws.

Conclusion

The Office of the City Attorney seeks authority to withhold the enclosed records for the reasons stated in this letter brief. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Charles H. Weir', written over the typed name.

Charles H. Weir
Assistant City Attorney
City of San Antonio

cc:

Rodolfo Lopez-



City of San Antonio

Reference Number: W044993-120814

Date Submitted: 12/8/2014 2:26:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 12/22/2014 5:00:00 PM

Requestor:

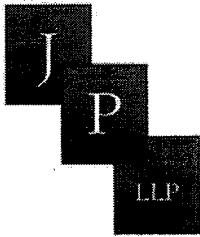
Rodolfo Lopez

,
--

Information Requested: Police Records

Describe the document(s) you are requesting: Police records from march 3rd 2013 pertaining to the death of Jimmy Garza DOB 05.29.1981

Andrew P. Johnson III
Alan P. Petrov



JOHNSON PETROV LLP

ajohnson@johnsonpetrov.com
apetrov@johnsonpetrov.com

January 21, 2015

VIA E-FILING

Open Records Division, MC-014
Office of the Attorney General of the State of Texas
209 West 14th Street
Austin, Texas 78701

RE: Request for Attorney General Decision Pursuant to Section 552.301 of the Texas
Public Information Act (the "Act")

Dear Sir or Madam:

On January 12, 2015, the City of West University Place, Texas (the "City") received a written request, attached hereto as **Exhibit "A,"** from Mr. Scott Hooper for certain information pursuant to the Act. Specifically, Mr. Hooper has requested a copy of the complete police records file associated with an officer shooting incident within the City. Certain information responsive to Mr. Hooper's request is generally considered to be public information under the Act and has already been released. However, after reviewing other information pertinent to his request, there appears to be information that is excepted by the Act. More specifically, but not by way of limitation, the City notes the following exceptions: Section 552.101, Certain Confidential Information, and Section 552.108, Certain Law Enforcement Information.

The City is hereby requesting that the Office of the Attorney General make a determination pursuant to Section 552.301 of the Act with respect to the requested information. By separate correspondence and in compliance with the requirements of Section 552.301 of the Act, the City shall be submitting, in writing, copies of the information in question and written comments stating the reasons why the above noted exceptions apply.

Please feel free to contact me at (713) 489-8977 should you need any further information regarding this request.

Sincerely,

Alan P. Petrov, City Attorney
City of West University Place, Texas

APP:mlr
Enclosure

cc: Mr. Scott Hooper (w/o enclosure)
Mr. Michael Ross, City Manager, City of West University Place, Texas (w/o enclosure) *[via email]*
Ms. Thelma Lenz, City Secretary, City of West University Place, Texas (w/o enclosure) *[via email]*

RECEIVED

JAN 12 2015

December 9, 2014

West University Place Police Department
Public Records Department
3814 University Blvd.
Houston, TX 77005

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

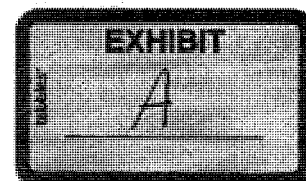
The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

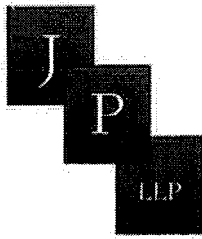
If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

- Respectfully,

Scott A. Hooper



Andrew P. Johnson III
Alan P. Petrov



JOHNSON PETROV LLP

ajohnson@johnsonpetrov.com
apetrov@johnsonpetrov.com

January 30, 2015

Via E-Filing

Open Records Division, MC-014
Office of the Attorney General
209 West 14th Street
Austin, Texas 78701

Re: City of West University Place (the "City"), Texas; Supplement to Request for Attorney General Decision Pursuant to Section 552.301 of the Texas Public Information Act (the "Act"); ID# 557743

Dear Sir or Madam:

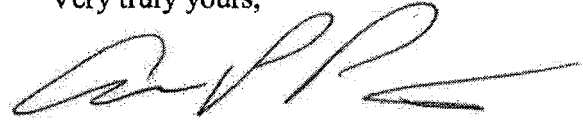
By letter dated January 21, 2015, the City submitted to your office a request for a determination regarding a request for public information received by the City on January 12, 2015 from Mr. Scott Hooper (the "Requestor"). For your reference, a copy of the original correspondence and the written request is enclosed herewith as Exhibit "A."

This correspondence shall serve the supplemental letter to my original correspondence mentioned above, providing the arguments why the stated exceptions apply and copies of the specific information requested. Enclosed herewith as Exhibit "B," is a copy of all of the information contained in the City's Police file responsive to Mr. Hooper's request.

Upon review of the responsive information, it is our opinion that the information is excepted from disclosure pursuant to Section 552.108(a)(2) of the Act, which provides in pertinent part that "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: ... (2) it is information that that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication." The information requested is maintained by the City's Police Department and the responsive information relates to an incident that involved a shooting by a police officer of the City in 2007. The incident report, page one of Exhibit "B," and the grand jury's disposition of the matter, the last page of Exhibit "B," have been released to the Requestor as information that is generally considered to be public. The original suspect is now deceased and, as evidenced by the grand jury determination; the investigation of the officer is concluded. As such, neither investigation resulted in a conviction or deferred adjudication and both investigations are now closed. As a result, Section 552.108(a)(2) is applicable. See Generally Open Records Rulings OR2004-5806 and OR2012-03507.

Should you have additional questions regarding this matter, please feel free to contact me at (713) 489-8977.

Very truly yours,



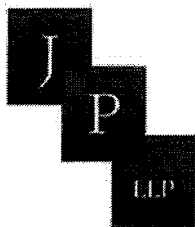
Alan P. Petrov, Attorney
City of West University Place, Texas

APP/mlr
Enclosures

cc: Mr. Scott Hooper (w/o enclosure)
Mr. Michael Ross, City Manager, City of West University Place, Texas (w/o enclosure)
[via email]
Ms. Thelma Lenz, City Secretary, City of West University Place, Texas (w/o enclosure)
[via email]

EXHIBIT "A"

Andrew P. Johnson III
Alan P. Petrov



JOHNSON PETROV LLP

ajohnson@johnsonpetrov.com
apetrov@johnsonpetrov.com

January 21, 2015

Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

RE: Public Information Act Request Relating to Officer Involved Shootings

Dear Mr. Hooper:

This firm represents the City of West University Place (the "City") as the City's City Attorney. On January 12, 2014, the City received a request from you for complete files related to any officer involved shootings from January 1, 2014 to present.

Please be advised that during that time period, the City had one (1) officer involved shooting. The incident report and the Grand Jury determination related to that event are considered public and are enclosed in response to your request. The remainder of the file is not generally considered to be public and a request has been filed with the Texas Attorney General's office for a determination concerning its release. A copy of that request is also enclosed for your records.

Should the Attorney General's Office determine that the remainder of the records that you requested are public, they will be released to you promptly. In the meantime feel free to contact me if you have any questions.

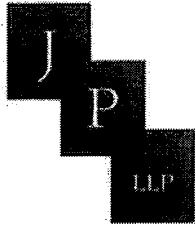
Sincerely,

Alan P. Petrov, City Attorney
City of West University Place, Texas

APP:mlr
Enclosure

cc: Mr. Michael Ross, City Manager, City of West University Place, Texas (w/o enclosure)
[via email]
Ms. Thelma Lenz, City Secretary, City of West University Place, Texas (w/o enclosure)
[via email]

Andrew P. Johnson III
Alan P. Petrov



JOHNSON PETROV LLP

ajohnson&johnsonpetrov.com
apetrov&johnsonpetrov.com

January 21, 2015

VIA E-FILING

Open Records Division, MC-014
Office of the Attorney General of the State of Texas
209 West 14th Street
Austin, Texas 78701

RE: Request for Attorney General Decision Pursuant to Section 552.301 of the Texas
Public Information Act (the "Act")

Dear Sir or Madam:

On January 12, 2015, the City of West University Place, Texas (the "City") received a written request, attached hereto as **Exhibit "A,"** from Mr. Scott Hooper for certain information pursuant to the Act. Specifically, Mr. Hooper has requested a copy of the complete police records file associated with an officer shooting incident within the City. Certain information responsive to Mr. Hooper's request is generally considered to be public information under the Act and has already been released. However, after reviewing other information pertinent to his request, there appears to be information that is excepted by the Act. More specifically, but not by way of limitation, the City notes the following exceptions: Section 552.101, Certain Confidential Information, and Section 552.108, Certain Law Enforcement Information.

The City is hereby requesting that the Office of the Attorney General make a determination pursuant to Section 552.301 of the Act with respect to the requested information. By separate correspondence and in compliance with the requirements of Section 552.301 of the Act, the City shall be submitting, in writing, copies of the information in question and written comments stating the reasons why the above noted exceptions apply.

Please feel free to contact me at (713) 489-8977 should you need any further information regarding this request.

Sincerely,

Alan P. Petrov, City Attorney
City of West University Place, Texas

APP:mlr
Enclosure

cc: Mr. Scott Hooper (w/o enclosure)
Mr. Michael Ross, City Manager, City of West University Place, Texas (w/o enclosure) *[via email]*
Ms. Thelma Lenz, City Secretary, City of West University Place, Texas (w/o enclosure) *[via email]*

RECEIVED

JAN 12 REC'D

December 9, 2014

West University Place Police Department
Public Records Department
3814 University Blvd.
Houston, TX 77005

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

- Respectfully,

Scott A. Hooper

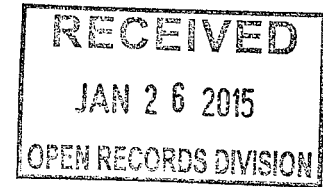
EXHIBIT "B"

BELINDA HIEL
FIRST ASSISTANT



DEVON ANDERSON
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

CRIMINAL JUSTICE CENTER
1201 FRANKLIN, SUITE 600
HOUSTON, TEXAS 77002-1901



January 22, 2015

Hon. Ken Paxton
Attorney General
Supreme Court Building
P.O. Box 12548
Austin, TX 78711-2548
Attn.: Open Records Division
Sent by certified mail, RRR, # 7011 2000 0002 0264 6807

Re: Enclosed Public Information Act request.

Dear Sir:

On January 9, 2015, this office received the enclosed request for disclosure of information (attached as Exhibit A) from Charlie Jones, which I have construed as a request for information under the Public Information Act.

Mr. Jones's request reads as follows: "open record request the police report for the killing of Jordan Baker Jan. 2014."

It appears that Mr. Jones is referring to the Houston Police Department's investigation into the shooting death of Jordan Baker by Officer Juventino Castro on January 16, 2014. The case was presented to a Harris County grand jury which no-billed Officer Castro on December 23, 2014. *See Exhibit B (no-bill).*

On behalf of Devon Anderson, the District Attorney of Harris County, Texas, I request that the Attorney General determine whether the information sought by the author of the enclosed correspondence is exempt from disclosure under TEX. GOV'T CODE § 552.108.

Enclosed as Exhibit C is the information responsive to Mr. Jones's request.¹ The District Attorney wishes to withhold this information and submits the following written comments regarding the applicability of the Public Information Act to these materials.

¹ The cover sheet and pages 1.001 and 1.002 in the report submitted as Exhibit C have been provided to Mr. Jones as constituting "basic information about an arrested person, an arrest or a crime" pursuant to Section 552.108(c).

Hon. Ken Paxton
January 22, 2015
Page 2.

Section 552.108(a)(2) & (b)(2) — Records related to investigation that did not result in conviction or deferred adjudication.

The information sought in Mr. Jones's request relates to a criminal investigation that did not result in conviction or deferred adjudication. As noted above, the investigation of Officer Castro resulted in a no-bill on December 23, 2014.

Accordingly, the information related to this criminal investigation is excepted from disclosure under Section 552.108(a)(2) and (b)(2) as relating to an investigation that did not result in conviction or deferred adjudication.

For the foregoing reasons, the District Attorney asks that you find that the materials described herein are excepted from disclosure under the Public Information Act.

Sincerely,

DEVON ANDERSON
Harris County District Attorney

A handwritten signature in black ink, appearing to read 'SAD', is written over the printed name of Scott A. Durfee.

SCOTT A. DURFEE
Assistant General Counsel
Office of the District Attorney
(713) 755-5816

cc: Mr. Charlie Jones
Sent by email:

EXHIBIT A

Durfee, Scott

From: charlie jones
Sent: Friday, January 09, 2015 11:44 AM
To: Durfee, Scott
Subject: Re: Public information request

open record request the police report for the killing of jordan baker jan. 2014

On Thursday, September 11, 2014 4:16 PM, "Durfee, Scott" <DURFEE_SCOTT@dao.hctx.net> wrote:

Mr. Jones,

I have attached the Attorney General opinion request and a letter to you. As the letter indicates, the Attorney General will rule on whether the information you seek is subject to disclosure under the Public Information Act.

Scott Durfee
Assistant General Counsel

EXHIBIT B

CAUSE NO. Direct 1452502

THE STATE OF TEXAS

§
§
§
§
§

IN THE DISTRICT COURT

v.

HARRIS COUNTY, TEXAS

CASTRO, J.

228th JUDICIAL DISTRICT

NO BILL - 228th GRAND JURY

To the Honorable Marc Carter

The 228th Grand Jury, having investigated the case against the above-named Defendant,
who is charged with Shooting Investigation

and having **FAILED TO FIND A BILL OF INDICTMENT**, now ask the Court to discharge said
Defendant from custody.

[Signature]
Foreman of the 228th Grand Jury

Date Signed: 12-23-14

DA Log No. 2120854

02771103

ORDER OF DISCHARGE

To the Sheriff of Harris County, Texas:

You are hereby commanded to discharge the following Defendant from custody:

J. Castro

Signed this 23rd day of December, 2014

FILED

Chris Daniel
District Clerk

Revised 2-4-13

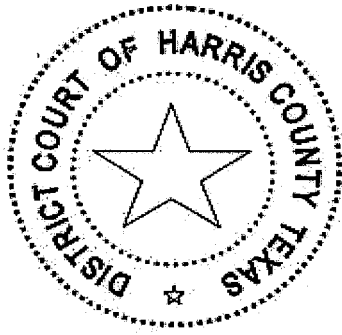
DEC 23 2014

Time: 13:05
Harris County, Texas

By [Signature]
Deputy

[Signature]
Presiding Judge

DISTRICT CLERK



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this January 22, 2015

Certified Document Number: 63619928 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

EXHIBIT C

Legal Department

Jonathan Graham

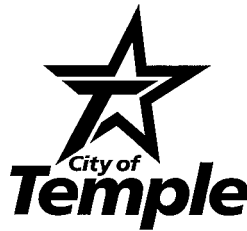
City Attorney

Trudi Dill

Deputy City Attorney

Nanette Rodriguez

Deputy City Attorney



Kayla Landeros

Deputy City Attorney

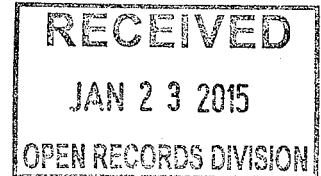
Gloria Elder

Risk Manager/Paralegal

Municipal Building
2 North Main, Suite 308
Temple, TX 76501
(254) 298-5674
FAX (254) 298-5711

January 14, 2015

Amanda Crawford
Chief, Open Records Division
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548



Re: Request for Law Enforcement Records – Scott Hooper/Reports related to TPD firearm injuries or deaths (2004-2015)

Dear Ms. Crawford,

On January 13, 2015, the City received the attached request for: "... all incidents in which a law enforcement office employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present..." (*See Exhibit A*)

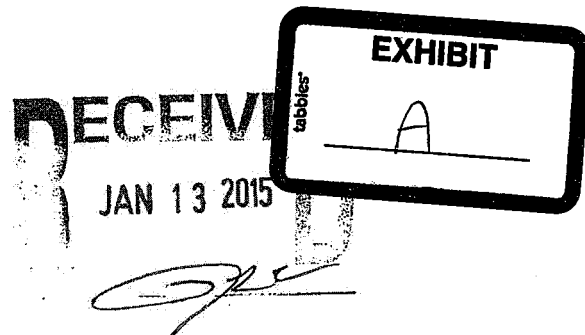
At this time, the City has released to the requestor none of the requested records, pending review for potential exceptions to public release. The City seeks to withhold a portion of the responsive records pursuant to § 143.089(g), § 552.101 through § 552.111, inclusive, § 552.115 through § 552.117, inclusive; § 552.127, § 552.128, § 552.131, § 552.137, § 552.139, § 552.143, § 552.147, § 552.148, and § 552.152 of the Texas Government Code.

The City appreciates the Attorney General's time and attention to this important matter.

Kindest Regards,

Nan Rodriguez
Deputy City Attorney
City of Temple, Texas

Cc: Scott Hooper
2929 Allen Parkway
39th Floor
Houston, Texas 77019



December 9, 2014

Temple Police Department
Public Records Department
209 East Avenue A
Temple, TX 76501

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

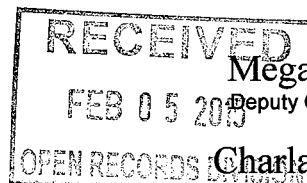
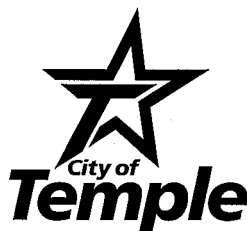
Respectfully,

Scott A. Hooper

Kayla Landeros
City Attorney

Trudi Dill
Deputy City Attorney

Nan Rodriguez
Deputy City Attorney



Megan Davis
Deputy City Attorney

Charla Thomas
Deputy City Attorney

Gloria Elder
Risk Manager/Paralegal

February 3, 2015

OR-557955-15
559687

Amanda Crawford
Chief, Open Records Division
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Re: Scott Hooper/Reports related to TPD firearm injuries or deaths (2004-2015) – ID #557955

Dear Ms. Crawford,


On January 13, 2015, the City received the attached request for: "... all incidents in which a law enforcement office employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present..." (See *Exhibit A*)

The City seeks to withhold a portion of the responsive information, a representative sample of which is attached here as *Exhibit B*, pursuant to § 552.108(a)(2) and § 552.108(b)(2) of the Texas Government Code. The criminal matters documents in the attached reports relate to a criminal investigation that has concluded and the final result was something other than a conviction or deferred adjudication. These records are an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement.

Additionally, the City seeks to withhold a portion of the responsive information, a representative sample of which is attached here as *Exhibit C*, pursuant to § 552.101 of the Texas Government Code because the records pertain to an Emergency Order of Detention and, as such, the information contains information, the release of which would be highly objectionable to any reasonable person and is of no legitimate concern to the public.

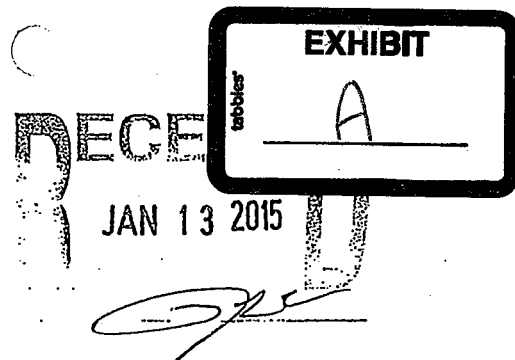
The City appreciates the Attorney General's time and attention to this important matter.

Kindest Regards,


Nan Rodriguez
Deputy City Attorney
City of Temple, Texas

Cc: Scott Hooper
2929 Allen Parkway
39th Floor
Houston, Texas 77019

Municipal Building
2 North Main Street
Suite 308
Temple, TX 76501



December 9, 2014

Temple Police Department
Public Records Department
209 East Avenue A
Temple, TX 76501

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper



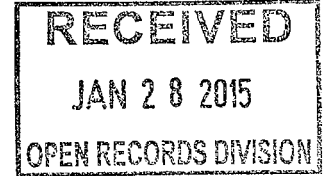
6000 WESTERN PLACE, SUITE 200
I-30 AT BRYANT IRVIN ROAD
FORT WORTH, TEXAS 76107
EMAIL: TOASE@TOASE.COM

TAYLOR • OLSON • ADKINS • SRALLA • ELAM
L.L.P.
ATTORNEYS & COUNSELORS

TELEPHONE: (817) 332-2580
TOLL FREE: (800) 318-3400
FACSIMILE: (817) 332-4740
WEBSITE: WWW.TOASE.COM

Andrea D. Russell
arussell@toase.com

January 23, 2015



02-558659-15
558659

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

Re: *Public Information Act Request of Scott Hooper Received by the City of Euless on January 9, 2015*

Dear General Abbott:

I represent the City of Euless in regard to the above-referenced matter. On January 9, 2015 the City received the public information request from Scott Hooper attached hereto as Exhibit A.

Pursuant to Section 552.301 of the Public Information Act (the "Act"), the City requests your determination regarding whether the responsive information falls within an exception to disclosure. The City will supplement this letter with its arguments against disclosure and a copy of the responsive information by the fifteenth day after the date that the request was received, in accordance with the Act. In particular, the City believes that the following exceptions may apply:

I. Section 552.108: Certain Law Enforcement Records

A. 552.108(a)(2)

Section 552.108(a)(2) of the Act provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from required public disclosure if it is information relating to an investigation that did not result in a conviction or deferred adjudication. Tex. Gov't. Code § 552.108(a)(2). The responsive materials contain information held by the City of Euless Police Department which relates to the detection, investigation, or prosecution of crime which resulted in an outcome other than conviction or deferred adjudication. As such, the City seeks a ruling that it may withhold such responsive information pursuant to Section 552.108(a)(2).

B. Section 552.108(b)(1)

The City believes that Section 552.108(b) may apply to the responsive information. Section 552.108 provides that “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if release of the internal record or notation would interfere with law enforcement or prosecution.” Tex. Gov’t Code § 552.108(b)(1).

To claim this exception, a governmental body must explain how and why release of the requested information would “unduly interfere with law enforcement and crime prevention.” Gov’t Code §§ 552.108(b)(1), 552.301; *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977); Tex. Att’y Gen. ORD-562 at 10 (1990), 531 at 2. Whether the release of particular records would unduly interfere with law enforcement is determined on a case-by-case basis. *See* Open Records Decision No. 409 at 2. (1984).

The City believes that the responsive documents may contain information that if released would unduly interfere with law enforcement and crime prevention, including but not limited to the identities of undercover officers and confidential informants. Thus, the City seeks to withhold information subject to Section 552.101(b).

II. Section 552.152: Information Concerning Officer Personal Safety

The City believes that Section 552.152 may apply to the responsive information. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

The City believes that the responsive information may contain identifying information of undercover law enforcement officers, which would subject the officers to a substantial threat of physical harm if released. Therefore, the City believes that to the extent such information is included in the responsive documents, it must withhold this information pursuant to Section 552.152 of the Government Code.

III. Section 552.101: Common Law Informer’s Privilege

The City believes that the responsive information may include information that may be withheld under the common law informer’s privilege which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects the identities of persons who report activities over which the governmental body has criminal law enforcement authority, provided that the subject of the information does not already

know the informer's identity. *See* Tex. Att'y Gen. ORD-515 at 3 (1998), 208 at 1-2 (1978). The privilege also protects the identities of individuals who report violations of statutes to the police agencies and who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See* Tex. Att'y Gen. ORD-279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). For the privilege to apply, the individual must report a violation of a criminal or civil statute. *See* Tex. Att'y Gen. ORD-582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Tex. Att'y Gen. ORD-549 at 5 (1990).

The City believes that the responsive documents may contain information that reveals the identities of confidential informants who have reported information to the police regarding criminal activities and violations of law. Therefore, the City seeks a ruling that to the extent this information is contained within the responsive materials, it may withhold such information under Section 552.101 in conjunction with the common law informer's privilege.

IV. Third Party Information

The responsive documents also include documents belonging to another law enforcement agency. The City has notified the third party law enforcement agency of the request and of its right to submit arguments to your office against disclosure of their responsive information. The letter sent to the third party is enclosed and marked as Exhibit B.

V. Previous Determination

Your office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an Attorney General decision. Additionally, your office has held that a governmental body may redact a living person's social security number without the necessity of requesting an Attorney General decision. Therefore, the City has not raised arguments regarding this which may be contained in the responsive material. To the extent this information is included in the responsive material it will be withheld in the event of a ruling requiring the City to release any portion of the responsive documents.

Section 552.130(c) provides that subject to Chapter 730 of the Transportation Code, a governmental body may redact information, without the necessity of requesting an Attorney General decision, if it relates to a driver's license, a personal identification document, or a motor vehicle title or registration issued by an agency of this state or another state or country. If the City redacts such information, it will notify the requestor as required by Section 552.130(e). The City, therefore, has not raised arguments regarding these types of information.

The requestor has been notified by copy of this letter that the City has chosen to seek an Attorney General decision on this matter. As stated above, the City will supplement this letter with the responsive information no later than the fifteenth day after the date the request was received. Please contact me at the above address with any questions regarding this matter.

January 23, 2015

Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "ADR Russell". The signature is fluid and cursive, with the first part being more stylized and the last part being more legible.

Andrea D. Russell

ADR:dkf

Enclosures

cc: Scott Hooper (w/o enclosures)
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

December 9, 2014

Eules Police Department
Public Records Department
1102 W Eules Blvd
Eules, TX 76040

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

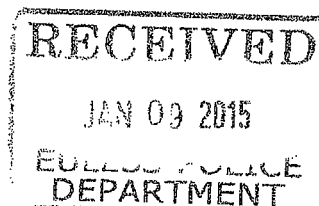
Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper *

Exhibit A
Eules - Hooper, S
1-9-15





6000 WESTERN PLACE, SUITE 200
1-30 AT BRYANT IRVIN ROAD
FORT WORTH, TEXAS 76107
EMAIL: TOASE@TOASE.COM

TAYLOR • OLSON • ADKINS • SRALLA • ELAM
LLP
ATTORNEYS & COUNSELORS

TELEPHONE: (817) 332-2580
TOLL FREE: (800) 318-3400
FACSIMILE: (817) 332-4740
WEBSITE: WWW.TOASE.COM

Andrea D. Russell
arussell@toase.com

January 23, 2015

Chief Jeffrey W. Halsted
Fort Worth Police Department
350 West Belknap
Fort Worth, Texas 76102

Re: *Statement to Persons Whose Proprietary Information is Requested in Response to Request for Information from Scott Hooper Received by the City of Euless on January 9, 2015*

Dear Sir/Madame:

Please be advised that I represent the City of Euless (the "City") regarding the above-referenced matter. *The information provided in this letter is not intended to constitute legal advice and should not be relied upon in lieu of consultation with appropriate legal advisors.*

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- a) identify the legal exceptions that apply
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies. Gov't Code §552.305(d).

Exhibit B
Euless - Hooper, S
1-9-15

A claim that an exception applies without further explanation will not suffice. (Attorney General Opinion H-436). You may contact the City to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with the material required by the Act. The attorney general is generally required to issue a decision within 45 working days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code §552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code §552.305(e).

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January 23, 2015

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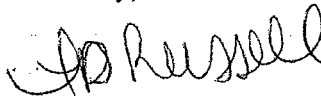
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Sincerely,



Andrea D. Russell

ADR:dkf

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Enclosure: Copy of Request for Information

cc: Scott Hooper (w/o enclosures)
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Office of Attorney General (w/o enclosure)
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

January 23, 2015

Page 4

bcc: Captain Steven Kockos (w/o enclosures)
Eules Police Department
1102 W. Eules Blvd.
Eules, Texas 76040

Ms. Michele Hastings (w/o enclosures)
Eules Police Department
1102 W. Eules Blvd.
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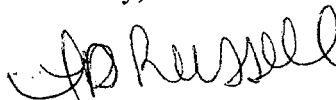
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Sincerely,



Andrea D. Russell

ADR:dkf

W:\Eulless\PIA & Subpoenas\Hooper, Scott 01.09.15\Third Party Ltr.docx

Enclosure: Copy of Request for Information

cc: Scott Hooper (w/o enclosures)
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Office of Attorney General (w/o enclosure)
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

December 9, 2014

Eules Police Department
Public Records Department
1102 W Eules Blvd
Eules, TX 76040

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

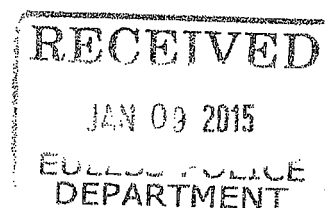
If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper *

Exhibit A

Eules - Hooper, S
1-9-15





6000 WESTERN PLACE, SUITE 200
L-30 AT BRYANT IRVIN ROAD
FORT WORTH, TEXAS 76107
EMAIL: TOASE@TOASE.COM

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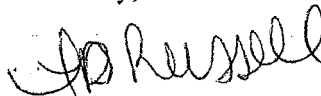
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2929 Allen Parkway, 39th Floor
Houston, Texas 77019

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Open Records Division
P.O. Box 12548
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Page 4

bcc: Captain Steven Kockos (w/o enclosures)
Euless Police Department
1102 W. Euless Blvd.
Euless, Texas 76040

Ms. Michele Hastings (w/o enclosures)
Euless Police Department
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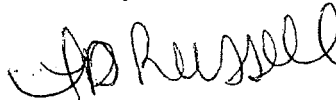
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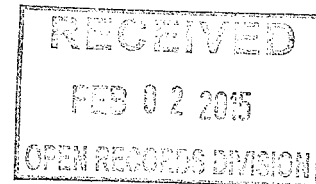
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Andrea D. Russell
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January 30, 2015

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548



02-558659-15
559220

*Re: Public Information Act Request of Scott Hooper Received by the City of Euless on
January 9, 2015; ID# 558659*

Dear General Paxton:

I represent the City of Euless in regard to the above-referenced matter. On January 9, 2015 the City received the public information request from Scott Hooper attached hereto as Exhibit A. The City previously submitted a letter to your office on January 23, 2015 preserving its arguments against disclosure for the information responsive to this request. This letter includes the City's arguments against disclosure. The responsive documents are enclosed and marked as Exhibit B.

Pursuant to Section 552.301 of the Public Information Act (the "Act"), the City requests your determination regarding whether the responsive information falls within an exception to disclosure. In particular, the City believes that the following exceptions apply:

I. Section 552.108: Certain Law Enforcement Records

A. Section 552.108(a)(2)

Section 552.108(a)(2) of the Act provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from required public disclosure if it is information relating to an investigation that did not result in a conviction or deferred adjudication. Tex. Gov't. Code § 552.108(a)(2). The responsive materials, enclosed and marked as Exhibit B, contain information held by the City of Euless Police Department which relates to the detection, investigation, or prosecution of crime which resulted in an outcome other than conviction or deferred adjudication. As such, the City seeks a ruling that it may withhold all of the responsive information pursuant to Section 552.108(a)(2).

B. Section 552.108(b)(1)

The City also believes that Section 552.108(b) applies to the responsive information. Section 552.108(b) provides that “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if release of the internal record or notation would interfere with law enforcement or prosecution.” Tex. Gov’t Code § 552.108(b)(1).

To claim this exception, a governmental body must explain how and why release of the requested information would “unduly interfere with law enforcement and crime prevention.” Gov’t Code §§ 552.108(b)(1), 552.301; *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977); Tex. Att’y Gen. ORD-562 at 10 (1990), 531 at 2. Whether the release of particular records would unduly interfere with law enforcement is determined on a case-by-case basis. *See* Open Records Decision No. 409 at 2. (1984).

The responsive documents contain information that if released would unduly interfere with law enforcement and crime prevention, including the identities of undercover officers, information about a specific undercover investigation, and the specific investigation location. Your office has previously determined that information that would reveal the identities of undercover agents or where employees travel on sensitive assignments may be withheld under Section 552.108. *See* Open Records Decision Nos. 211 (1978), 143 (1976). Therefore, at a minimum, the City seeks to withhold the identities of the undercover officers contained in the responsive documents. Additionally, the City seeks to withhold all of the responsive information under Section 552.108(b) as the details of a specific undercover investigation, as well as the specific investigation location, are repeatedly referenced. This information, if released to the public, may alert those involved in criminal activity in that area thereby impeding the officers’ ability to detect or investigate criminal activity in that manner or in that area in the future.

II. Section 552.152: Information Concerning Officer Personal Safety

The City believes that Section 552.152 applies to the responsive information. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

As asserted above, the responsive information, enclosed and marked as Exhibit B, contains identifying information of undercover law enforcement officers, which would subject the officers to a substantial threat of physical harm if released. Therefore, the City believes that it must withhold this information pursuant to Section 552.152 of the Act.

III. Third Party Information

All of the responsive documents submitted with this letter are in the possession of the Euless Police Department. Therefore, the arguments and exceptions raised in this letter are applicable to all of the information submitted. However, the responsive documents also include documents that the Euless Police Department received from other law enforcement agencies. The City has notified both third party law enforcement agencies of the request and of their right to submit arguments to your office against disclosure of the responsive information. The letters sent to the third parties are enclosed and marked as Exhibit C. The documents belonging to the other agencies have been identified within Exhibit B.

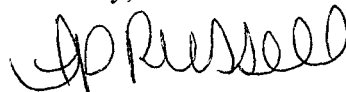
IV. Previous Determination

Your office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an Attorney General decision. Additionally, your office has held that a governmental body may redact a living person's social security number without the necessity of requesting an Attorney General decision. Therefore, the City has not raised arguments regarding this which may be contained in the responsive material. To the extent this information is included in the responsive material it will be withheld in the event of a ruling requiring the City to release any portion of the responsive documents.

Section 552.130(c) provides that subject to Chapter 730 of the Transportation Code, a governmental body may redact information, without the necessity of requesting an Attorney General decision, if it relates to a driver's license, a personal identification document, or a motor vehicle title or registration issued by an agency of this state or another state or country. If the City redacts such information, it will notify the requestor as required by Section 552.130(e). The City, therefore, has not raised arguments regarding these types of information.

The requestor has been notified by copy of this letter that the City has chosen to seek an Attorney General decision on this matter. Please contact me at the above address with any questions regarding this matter.

Sincerely,



Andrea D. Russell

ADR:mar
Enclosures

cc: Scott Hooper (w/o enclosures)
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Chief Jeffrey W. Halsted (w/o enclosures)
Fort Worth Police Department
350 West Belknap
Fort Worth, Texas 76102

Ronnie Cloud, Commander (w/o enclosures)
Northeast Field Office
Tarrant County Narcotics Unit
P.O. Box 24148-1148
Fort Worth, Texas 76124

Section 552.108(a)(2)

As asserted in my letter, the responsive information are related to the detection, investigation, or prosecution of crime that did not result in a conviction or deferred adjudication. The responsive information relates to an undercover narcotics investigation during which a fatal shooting occurred while the undercover unit attempted to serve a warrant on the suspect. The underlying narcotics investigation did not result in a conviction or deferred. Additionally, the Officer that fired the fatal shot was also investigated criminally and the case was ultimately “no billed” by the Grand Jury. Therefore, the criminal investigation into the officer’s actions also resulted in an outcome other than conviction or deferred. Therefore, the City believes that Section 552.108(a)(2) applies to the responsive information in its entirety and that it may withhold all of the responsive information.

Additionally, the City understands that generally even when Section 552.108 applies, the “basic information” must be released. The City specifically seeks to withhold any identifying information about any undercover officers involved and any specifics about the undercover investigation even from the “basic information.” The City is willing to release the following types of basic information, and seeks a ruling that the release of the following information will be sufficient: confirmation of the incident that it occurred, description of the incident, date of incident, and the name of the deceased.

Undercover Officers

As asserted in my letter, the responsive information contains the names and other identifying information (including photographs) of several undercover police officers. The Tarrant County Narcotics Unit is comprised of law enforcement officers from several different agencies. This unit is an undercover unit, and all of the officers involved with, assigned to, or associated with this unit were working undercover at the time of this operation. Therefore, in the event that your office determines that Section 552.108(a)(2) does not apply to allow the City to withhold all of the responsive documents, the City seeks to withhold the identifying information of the undercover officers found throughout the responsive documents.

December 9, 2014

Eules Police Department
Public Records Department
1102 W Eules Blvd
Eules, TX 76040

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

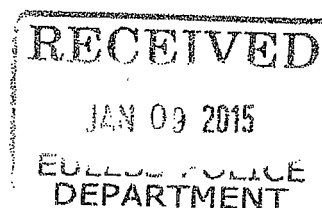
Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper *

Exhibit A
Hooper, Scott
01-09-15





6000 WESTERN PLACE, SUITE 200
I-30 AT BRYANT IRVIN ROAD
FORT WORTH, TEXAS 76107
EMAIL: TOASE@TOASE.COM

TAYLOR·OLSON·ADKINS·SRALLA·ELAM
LLP

ATTORNEYS & COUNSELORS

TELEPHONE: (817) 332-2580
TOLL FREE: (800) 318-3400
FACSIMILE: (817) 332-4740
WEBSITE: WWW.TOASE.COM

Andrea D. Russell
arussell@toase.com

January 23, 2015

Chief Jeffrey W. Halsted
Fort Worth Police Department
350 West Belknap
Fort Worth, Texas 76102

Re: *Statement to Persons Whose Proprietary Information is Requested in Response to Request for Information from Scott Hooper Received by the City of Euless on January 9, 2015*

Dear Sir/Madame:

Please be advised that I represent the City of Euless (the "City") regarding the above-referenced matter. *The information provided in this letter is not intended to constitute legal advice and should not be relied upon in lieu of consultation with appropriate legal advisors.*

The City has received a formal request to inspect or copy some of its files. A copy of the request for information is enclosed. The requested files include records the City received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires the release of your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies. Gov't Code §552.305(d).

Exhibit C
Hooper, Scott
01-09-15

January 23, 2015

Page 2

A claim that an exception applies without further explanation will not suffice. (Attorney General Opinion H-436). You may contact the City to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with the material required by the Act. The attorney general is generally required to issue a decision within 45 working days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General, Gov't Code §552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code §552.305(e).

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.3d 763, 776 (Tex.) cert. denied, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App. – Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

January 23, 2015
Page 3

Nat'l Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).
Open Records Decision No. 639 (1996).
Open Records Decision No. 661

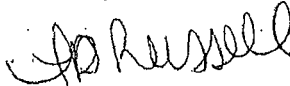
Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN-TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov> or call the attorney general's Opinions Library at (512) 936-1730.

Sincerely,



Andrea D. Russell

ADR:dkf

W:\EnclosPIA & Subpoena\Hooper, Scott 01.09.15\Titled Party Ltr.docx

Enclosure: Copy of Request for Information

cc: Scott Hooper (w/o enclosures)
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Office of Attorney General (w/o enclosure)
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

January 23, 2015
Page 4

bcc: Captain Steven Kockos (w/o enclosures)
Euless Police Department
1102 W. Euless Blvd.
Euless, Texas 76040

Ms. Michele Hastings (w/o enclosures)
Euless Police Department
1102 W. Euless Blvd.
Euless, Texas 76040



6000 WESTERN PLACE, SUITE 200
I-30 AT BRYANT IRVIN ROAD
FORT WORTH, TEXAS 76107
EMAIL: TOASE@TOASE.COM

TAYLOR • OLSON • ADKINS • SRALLA • ELAM
L.L.P.
ATTORNEYS & COUNSELORS

TELEPHONE: (817) 332-2580
TOLL FREE: (800) 318-3400
FACSIMILE: (817) 332-4740
WEBSITE: WWW.TOASE.COM

Andrea D. Russell
arussell@toase.com

January 30, 2015

Ronnie Cloud, Commander
Northeast Field Office
Tarrant County Narcotics Unit
P.O. Box 24148-1148
Fort Worth, Texas 76124

*Re: Statement to Persons Whose Proprietary Information is Requested in Response to
Request for Information from Scott Hooper Received by the City of Euless on
January 9, 2015*

Dear Commander Cloud:

Please be advised that I represent the City of Euless (the "City") regarding the above-referenced matter. *The information provided in this letter is not intended to constitute legal advice and should not be relied upon in lieu of consultation with appropriate legal advisors.*

The City has received a formal request to inspect or copy some of its files. A copy of the request for information is enclosed. The requested files include records the City received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires the release of your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply
- b) identify the specific parts of each document that are covered by each exception, and
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A claim that an exception applies without further explanation will not suffice. (Attorney General Opinion H-436). You may contact the City to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with the material required by the Act. The attorney general is generally required to issue a decision within 45 working days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code §552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code §552.305(e).

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

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Open Records Decision No. 552 (1990).

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App. – Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Nat'l Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).
Open Records Decision No. 639 (1996).
Open Records Decision No. 661

Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN-TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov> or call the attorney general's Opinions Library at (512) 936-1730.

Sincerely,



Andrea D. Russell

ADR:mar

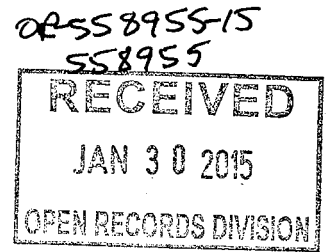
Enclosures: Copy of Request for Information and Documents

cc: Scott Hooper (w/o enclosures)
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Office of Attorney General (w/o enclosures)
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548



Office of the City Attorney



January 27, 2015

Via CMRRR: 7010 3090 0001 4673 1929

Honorable Ken Paxton
Attorney General
Opinion Committee
P. O. Box 12548
Austin, TX 78711-2548

Re: Public Information Decision Request (Our File No. 1082)

Dear Mr. Paxton:

Pursuant to the provisions of Section 552 of the Government Code, the City of Lubbock (hereinafter called "City") is requesting a public information decision for a request received on January 12, 2015, a copy of which is attached hereto as Exhibit A. The requestor has asked for information related to documents regarding numerous police cases. The City has not yet released any of the information because some of the Act's exceptions may apply. Please note the City offices were closed for business on January 19, 2015.

The City is raising the following exceptions in its request:

Section 552.101 (exception for information considered to be confidential by law);

Section 552.103 (exception relating to litigation, reasonably anticipated litigation or settlement negotiations);

Section 552.107 (exception pertaining to certain legal matters prohibited from disclosures because of a duty under the Texas Rules of Evidence, or the Texas Disciplinary Rules of Professional Conduct);

Section 552.108 (exception relating to certain law enforcement and prosecutorial information);


Section 552.111 (exception pertaining to agency memoranda); and

Section 552.130 (exception for motor vehicle records).

Honorable Ken Paxton
Attorney General
January 27, 2015
Page 2

Thank you very much for your consideration of these matters. A formal brief explaining the exceptions raised and copies of the information at issue will follow in the mail. Please do not hesitate to call or write if you need information with regard to this request for a decision.

Yours truly,



Amy L. Sims
Deputy City Attorney

ALS:dm
Enclosure (Exhibit A)

cc: (w/o Exhibit Encl.)

Via CMRRR: 7010 3090 0001 4673 1936

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019



Office of the City Attorney

January 27, 2015

Via CMRRR: 7010 3090 0001 4673 1936

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

Re: Open Records Request (Our File No. 1082)

Dear Mr. Hooper:

The City of Lubbock (the "City") has received your request for information related to numerous police cases. As some of this information may be confidential, the City has written to the Texas Attorney General, a copy of which letter is enclosed. If you wish to submit an opinion as to this matter, you may write to the Attorney General at the following address:

Honorable Ken Paxton
Attorney General
Opinion Committee
Supreme Court Building
P. O. Box 12548
Austin, TX 78711-2548

Thank you.

Sincerely,

Amy L. Sims
Deputy City Attorney

ALS:dm
Enclosure (w/o Exhibits)

cc: Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

EXHIBIT A

RECEIVED

JAN 12 2015

LPD RECORDS

December 9, 2014

Lubbock Police Department
Public Records Department
P. O. Box 2000
Lubbock, TX 79457

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

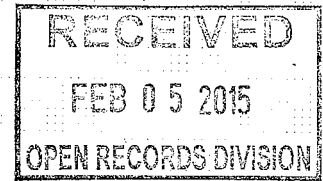
The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper



0 R-558955-15
559648

Office of the City Attorney

February 3, 2015

Via CMRRR: 7010 3090 0001 4673 1981 (Box)

Via CMRRR: 7010 3090 0001 4673 2049 (Tyvek Envelope)

Honorable Ken Paxton
Attorney General
Opinion Committee
P. O. Box 12548
Austin, TX 78711-2548

**Re: Public Information Decision Request (Our File No. 1082)
AG ID #558955, dated 2-02-15**

Dear Mr. Paxton:

The City of Lubbock (the "City") is requesting an Open Records Decision from your office as it has received a request on January 12, 2015, for certain information related to documents regarding numerous police cases. A copy of the request is attached hereto as **Exhibit A**. Please note that the City offices were closed for business on January 19, 2015. Please also note that our initial letter request to your office was dated January 27, 2015, and is attached hereto as **Exhibit B**.

The City is requesting a decision from your office pursuant to Chapter 552 of the Texas Government Act, also known as the Public Information Act (the "Act") as the requested information may be confidential.

The City raised the following exceptions in its January 27th request:

- Section 552.101 (exception for information considered to be confidential by law);
- Section 552.103 (exception relating to litigation, reasonably anticipated litigation or settlement negotiations);
- Section 552.107 (exception pertaining to certain legal matters prohibited from disclosures because of a duty under the Texas Rules of Evidence, or the Texas Disciplinary Rules of Professional Conduct);
- Section 552.108 (exception relating to certain law enforcement and prosecutorial information);
- Section 552.111 (exception pertaining to agency memoranda);
- Section 552.130 (exception for motor vehicle records);

Exhibit C (Parts 1—18)

The information contained within **Exhibit C (Parts 1—18)** is confidential pursuant to the provisions of Section 552.101 and Section 552.108 of the Act. This information is confidential because it relates to the “g file” of police officers. The g file is the internal personnel file of a police officer that is maintained in accordance with Section 143.089(g) of the Texas Local Government Code. This provision states that the City “may not release any information contained in the department file to any agency or person requesting information relating to a ... police officer.” The information in the g file is a category of information that is not available for public inspection. *City of San Antonio v. Texas Att’y General*, 851 S.W.2d 946 (Tex.App.—Austin 1993). *See also* Open Records Decision No. 650 (1996).

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to investigations of police officers for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, No.04-99-00848-CV, 2000 WL 1918877 (Tex. App.—San Antonio, Dec. 20, 2000, no pet. h.) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.089(g) is confidential).

The information contained in **Exhibit C** is all information that is located within the g file of the police officers. This information is a part of internal investigations and contains all items solely for the police department's use, is reasonably related to each officer's employment relationship with the department, and is maintained in the department's internal file. (Your office has previously ruled that a portion of this information as labeled **Exhibit C-10** was confidential information pursuant to Section 143.089(g) of the Local Government Code. *See* OR2012-04654.)

Exhibit D (Parts 1—9)

The information contained within **Exhibit D** is confidential pursuant to the terms of Section 552.108 of the Act. Section 552.108(a)(2) of the Act excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Texas Gov't Code §552.108(a)(2). The information contained in **Exhibit D** concerns concluded investigations that did not result in a conviction or deferred adjudication. Therefore, the information should remain confidential. Please see also OR2000-1930, OR2000-1872, OR99-2747, and OR99-2398.

Some of the cases were previously reviewed by your office and ruled confidential as open cases. However, since circumstances have changed and these cases are now closed investigations with no convictions or deferred adjudications, the City is asking for another review of these cases. See OR2010-14908, OR2011-18500, and OR2012-11094.

Exhibit E (Parts 1—2)

The City asserts that the information contained in **Exhibit E** is also confidential pursuant to the terms of Section 552.108 of the Act. This section excepts from disclosure “information held by a law enforcement agency...that deals with the detection, investigation, or prosecution of crime” if the “release ...would interfere with the detection, investigation, or prosecution of crime.” See Section 552.108(a)(1) of the Act.

In this case, the information within **Exhibit E** contains evidence in a pending police investigation. Release of this information could hurt the investigation of this case. The requested information should remain confidential while this case is still under police investigation and being reviewed for any potential criminal prosecution. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex.Civ.App.—Houston [14th Dist.] 1975).

Exhibit F (Parts 1—5)

The following provisions of the Act may apply to the information contained within **Exhibit F**:

Section 552.130 (exception for motor vehicle records).

The City is raising the exceptions for motor vehicle records. The Act excepts a driver's license issued by an agency of this state or another state or country from disclosure. The information includes the driver's licenses of individuals. As such, this information should remain confidential.

The information also includes vehicle license plate numbers and vehicle identification numbers. These numbers are also protected by Section 552.130 of the Act because they are “...motor vehicle title or registration issued by an agency of this state or another state or country.” See Section 552.130(a)(2) of the Act. Again, this information should remain confidential.

Section 552.101 (exception for information considered to be confidential by law; fingerprints).

The City believes that this information may be confidential pursuant to the terms of Section 552.101 of the Act. The requested information contains fingerprints. Pursuant to Chapter 560 of the Texas Government Code, this information may be confidential. This chapter

governs a governmental body's possession of biometric identifiers, of which fingerprints are included by definition. Further, section 560.003 of the Texas Government Code specifically exempts such biometric identifiers from disclosure pursuant to the Act.

The disclosure of biometric identifiers is strictly governed by section 560.002 of the Texas Government Code. This provision states:

A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure.

In this case, the individuals have not given consent to any disclosure; therefore, the City may not release such information.

Section 552.101 (exception for information considered to be confidential by law; dates of birth).

The information requested contains the dates of birth of various people within the police reports. This information may be protected by common law privacy. This issue is raised if the information: 1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and 2) be of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) at 685. The City is concerned that the release of this information would be an invasion of the signatories' privacy and subject them to possible identity theft.

The Texas Supreme Court has held that the dates of birth for state employees should be excepted from disclosure. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Court found that the release of birth dates was an invasion of individual's privacy and could subject them to identity theft. As the Court stated, quoting from Tex. Att'y Gen. OR-2006-01938:

Identity theft, without question, is becoming one of the fastest growing criminal and consumer offenses in the twenty-first century. *See Daly v. Metropolitan Life Ins. Co.*, 4 Misc.3d 887, 782 N.Y.S.2d 530, 535 (N.Y.Sup.2004) (denying defendant's motion for summary judgment in negligence action against insurer who disclosed consumers' names, social security numbers, and date of birth information). The Federal Trade Commission estimated 27.3 million reported cases of identity theft, causing billions of dollars in damages, in the five years preceding early 2003. *Id.* (citing Thomas Fedorek, *Computers + Connectivity = New Opportunities for Criminals and Dilemmas for Investigators*, 76-Feb. N.Y. St. B.J. 10, 15 (February, 2004)). A date of birth obtained in combination with

other data about an individual can be used in at least two harmful ways: to obtain sensitive information about an individual and to commit identity theft. *See Daly v. Metropolitan Life Ins. Co.*, 782 N.Y.S.2d at 535–36; *Scottsdale Unified Sch. Dist. v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 539 (1998). *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d at 343.

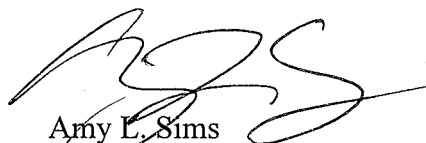
Furthermore, the Court noted: “There is a difference between electronic compilation in searchable form and records that can only be found by a diligent search through scattered files. The former presents a far greater threat to privacy” (Kurtz, *The Invisible Becomes Manifest: Information Privacy in a Digital Age*, 38 Washburn LJ 151, 155–56 [1998]). Moreover, on-line data brokers often collect information taken from public records and allow access in a searchable form, which potentially leads to abuse by identity thieves.”

Like the state employees, the individuals have a similar interest in protection of personal information, such as their date of birth, from release. The need to protect the information from use by identity thieves may outweigh the need for public disclosure. Please note that the requestors are asking for a document that contains such information on various people. Such information may also be of no legitimate concern to the public.

Furthermore, the document contains the addresses of the individuals. This information, along with the dates of birth, would make it very easy for an identity theft to steal the identities of these people. Due to threat of identity theft, this information should be excepted from disclosure.

Thank you very much for your consideration of these matters. Please do not hesitate to call or write if you need further information with regard to this request for a decision.

Yours truly,



Amy L. Sims
Deputy City Attorney

ALS:dm
Enclosures (Exhibits A, B, C, D, E and F)

cc: (w/o Exhibit Encl.)
Via CMRRR: 7010 3090 0001 4673 1998
Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

INDEX: Brief Exhibits A—F

Documents sent to AG along with A. Sims Brief dated 2-03-15

AG ID #558955 dated 2-02-15 re: #1082 — Scott Hooper ORR

Box 1 of 1 (5 red wells)

| | | | |
|---------------|-------|-------------|-------|
| AG ID #558955 | gfile | Ex. C-1—7 | #1082 |
| AG ID #558955 | gfile | Ex. C-8—12 | #1082 |
| AG ID #558955 | gfile | Ex. C-13—18 | #1082 |
| AG ID #558955 | | Ex. D-1—4 | #1082 |
| AG ID #558955 | | Ex. D-5—9 | #1082 |

Large White Tyvek 1 of 1 (1 manila file folder + 2 small Tyvek)

Manila File Folder:

A.Sims Brief with Exhibits A and B

Small Tyvek

| | | |
|---------------|-----------|-------|
| AG ID #558955 | Ex. E-1—2 | #1082 |
|---------------|-----------|-------|

Small Tyvek

| | | |
|---------------|-----------|-------|
| AG ID #558955 | Ex. F-1—5 | #1082 |
|---------------|-----------|-------|

EXHIBIT A

RECEIVED

JAN 12 2015

LPD RECORDS

December 9, 2014

Lubbock Police Department
Public Records Department
P. O. Box 2000
Lubbock, TX 79457

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

Scott A. Hooper

EXHIBIT B



Office of the City Attorney

January 27, 2015

Via CMRRR: 7010 3090 0001 4673 1929

Honorable Ken Paxton
Attorney General
Opinion Committee
P. O. Box 12548
Austin, TX 78711-2548

Re: Public Information Decision Request (Our File No. 1082)

Dear Mr. Paxton:

Pursuant to the provisions of Section 552 of the Government Code, the City of Lubbock (hereinafter called "City") is requesting a public information decision for a request received on January 12, 2015, a copy of which is attached hereto as Exhibit A. The requestor has asked for information related to documents regarding numerous police cases. The City has not yet released any of the information because some of the Act's exceptions may apply. Please note the City offices were closed for business on January 19, 2015.

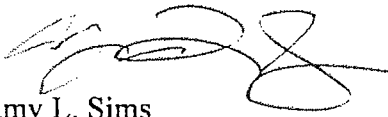
The City is raising the following exceptions in its request:

- Section 552.101 (exception for information considered to be confidential by law);
- Section 552.103 (exception relating to litigation, reasonably anticipated litigation or settlement negotiations);
- Section 552.107 (exception pertaining to certain legal matters prohibited from disclosures because of a duty under the Texas Rules of Evidence, or the Texas Disciplinary Rules of Professional Conduct);
- Section 552.108 (exception relating to certain law enforcement and prosecutorial information);
- Section 552.111 (exception pertaining to agency memoranda); and
- Section 552.130 (exception for motor vehicle records).

Honorable Ken Paxton
Attorney General
January 27, 2015
Page 2

Thank you very much for your consideration of these matters. A formal brief explaining the exceptions raised and copies of the information at issue will follow in the mail. Please do not hesitate to call or write if you need information with regard to this request for a decision.

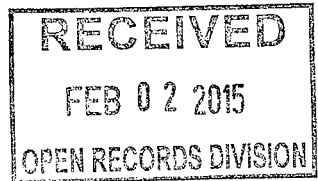
Yours truly,


Amy L. Sims
Deputy City Attorney

ALS:dm
Enclosure (Exhibit A)

cc: (w/o Exhibit Encl.)

Via CMRRR: 7010 3090 0001 4673 1936
Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019



OFFICE OF THE CITY ATTORNEY

Mayor

Oscar Leeser

January 29, 2015

02-559065-15
559065

Via Certified Mail
#91 7199 9991 7030 7746 7461

City Council

District 1

Ann Morgan Lilly

District 2

Larry Romero

District 3

Emma Acosta

District 4

Carl L. Robinson

District 5

Dr. Michiel R. Noe

District 6

Claudia Ordaz

District 7

Lily Limón

District 8

Cortney C. Niland

City Manager

Tommy Gonzalez

The Honorable Greg Abbott, Attorney General
Attn: Open Records Division, MC 014
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Open Records Decision Request of: Mr. Scott A. Hooper

Dear Attorney General Abbott and Committee Members:

I am writing this letter pursuant to Chapter 552.301 of the Texas Government Code to seek your opinion concerning whether certain requested information is exempted from release. When corresponding, please reference our case number assigned, **15-1026-5097**.

Mr. Scott A. Hooper has requested copies of all cases for all officer-involved shootings resulting in injury or death from 2004 to present from the El Paso Police Department. A copy of the request received by the City on January 12, 2015 is attached as **Exhibit "A."**

Specifically, the City claims that the requested information is excepted from disclosure as: (1) information made confidential by law under section 552.101 Government Code, to include information governed by the Texas Securities Act V.T.C.S art. 581-33 and the US Securities and Exchange Act of 1934 Section 10(b); (2) certain personnel information under section 552.102 GOV'T CODE; (3) information concerning litigation or settlement negotiations involving the state or a political subdivision under section 552.103 GOV'T CODE; (4) information pertaining to certain legal matters under section 552.107 GOV'T CODE; (5) information concerning certain law enforcement records under section 552.108 GOV'T CODE; (6) agency memoranda under section 552.111 GOV'T CODE; (7) information concerning certain addresses, telephone numbers, social security numbers, and personal family information of public officials and employees, peace officers, Texas Department of Criminal Justice Employees, and certain law enforcement personnel under section 552.117 GOV'T CODE; (8) confidentiality of addresses, telephone numbers, social security numbers, and personal family information of peace officers, county jailers, security officers, and employees of Texas Department of Criminal Justice or a prosecutor's office under section 552.1175 GOV'T CODE; (9) photographs of peace officers under section 552.119 GOV'T CODE; (10) motor vehicle inspection information under section 552.130 GOV'T CODE; (11) motor vehicle record information under section 552.131 GOV'T CODE; (12) the social

Sylvia Borunda Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015

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OFFICE OF THE CITY ATTORNEY

security number of living persons under section 552.147 GOV'T CODE; (13) public employee or officer personal safety under section 552.152 GOV'T CODE; (14) information excepted from disclosure as attorney client privileged information and attorney work product under sections 552.107 GOV'T CODE, 552.111 GOV'T CODE, Texas Rules of Evidence 503, and the Texas Rules of Civil Procedure rule 192.5, (15) juvenile records under FAMILY CODE SECTION 58.007(c); mental health records under Section 552.101, GOV'T CODE.

In accordance with section 552.301(e) of the Act, the City will be sending, within fifteen (15) business days of the date that it received the request for information: (1) written comments stating the reasons the stated exceptions apply that would allow the information at issue to be withheld from the requestor; (2) to the extent accessible, a copy of the specific information requested, or a representative sample of the information regarding which the City deems such exemptions apply; and (3) an additional copy of the written request for information.

Should you have any questions or concerns, please do not hesitate to contact me by telephone at (915) 212-1110.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Ortiz", is written over the typed name.

Daniel Ortiz
Assistant City Attorney

DO/ml
Enclosures

cc: Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston TX 77019
(without enclosures)

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015



OFFICE OF THE CITY ATTORNEY

Mayor

Oscar Leaser

January 29, 2015

City Council

District 1

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District 2

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Emma Acosta

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Carl L. Robinson

District 5

Dr. Michiel R. Noe

District 6

Claudia Ordaz

District 7

Lily Limón

District 8

Cortney C. Niland

City Manager

Tommy Gonzalez

Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston TX 77019

Re: Request for Records from El Paso Police Department

The City will release copies of the #1 Incident Reports, the Complaint Affidavits, and the Press Releases for all of the requested reports with the exception of Case No. 12-03117 and Case No. 08-346231. The El Paso Police Department will invoice you separately for the copies. The documents will be redacted to remove social security numbers of living persons and some motor vehicle information.

The City believes the remainder of the information should be withheld and has asked for a decision from the Attorney General about whether such information is within exceptions to public disclosure. A copy of the letter submitted to the Attorney General is enclosed.

If you have any questions or comments, please feel free to contact me. Otherwise, the Attorney General will advise you of his decision.

Very truly yours,



Daniel Ortiz
Assistant City Attorney

DO:mkl

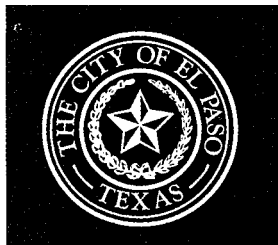
Enclosure

cc: Opinion Committee
Office of the Attorney General

Sylvia Borunda Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015

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**SIGNED STATEMENT AS TO THE DATE OF
THE RECEIPT OF THE REQUEST**

Re: Open Records Decision Request for Mr. Scott A. Hooper

Pursuant to the requirement in §552.301(e)(1)(C), Gov't Code, we hereby provide you with this statement regarding the date of the receipt of the request.

The clarification of the request from Mr. Hooper was received by the City of El Paso on January 12, 2015.

Please note that the official City Hall business hours for the City of El Paso are Monday through Thursday, 7:00 a.m. to 6:00 p.m. All offices in City Hall are closed on Fridays. Also, City Hall was closed January 19, 2015. Subsequent to the date of receipt, the following days have been business days for the City of El Paso: January 13, 14, 15, 20, 21, 22, 26, 27, 28 and 29, 2015.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Ortiz", is written over a horizontal line.

Daniel Ortiz
Assistant City Attorney

DO:ml

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015

December 9, 2014

El Paso Police Department
Public Records Department
911 N. Raynor
El Paso, TX 79903

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

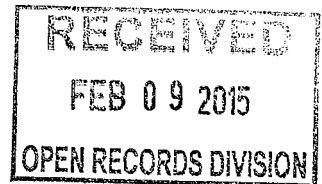
If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

'15 JAN 12 PM2:00

Scott A. Hooper

EXHIBIT A
15-1026-5097



OFFICE OF THE CITY ATTORNEY

Mayor

Oscar Leaser

February 5, 2015

02-559065-15
559993

Via Certified Mail
#91 7199 9991 7030 7822 3523

City Council

District 1

Ann Morgan Lilly

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Larry Romero

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Emma Acosta

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Carl L. Robinson

District 5

Dr. Michiel R. Noe

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Claudia Ordaz

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Lily Limón

District 8

Cortney C. Niland

City Manager

Tommy Gonzalez

The Honorable Ken Paxton, Attorney General
Attn: Open Records Division, MC 014
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Open Records Decision Request for Mr. Scott A. Hooper (#559065)

Dear General Paxton and Committee Members:

I am writing this letter pursuant to Chapter 552.301 of the Texas Government Code to seek your opinion concerning whether certain requested information is exempted from release. When corresponding, please reference our case number assigned, 15-1026-5097.

Mr. Scott A. Hooper has requested complete copies of all cases regarding officer-involved shootings for the time period of January 1, 2004 to present from the El Paso Police Department. A copy of the request received by the City on January 12, 2015 is attached as **Exhibit "A."** The City will release redacted copies of the #1 Incident Reports and Complaint Affidavits, along with all Press Releases, for all responsive cases with the exception of Case No. 12-03117 and Case No. 08-346231. (See attached copy of letter sent to Requestor on January 29, 2015.)

Copies of the remaining records compiled by the El Paso Police Department for your in-camera review are attached as **Exhibit "B."** The City submits that the records enclosed as **Exhibit "B"** must be withheld pursuant to Sections 552.108(a)(1) & (b)(1), 552.103, 552.103(a) and 552.101, Gov't Code, and Section 58.007(c), Family Code.

SECTION 552.108(a)(1) & (b)(1), GOV'T CODE

Police Department Cases 08-346231, 11-176074, 12-225033 and 13-060023 are currently pending prosecution with the District Attorney. The City submits that the records attached as **Exhibit "B"** are part of an ongoing prosecution and should be exempt from disclosure pursuant to Section 552.108(a)(1) and (b)(1) of the Government Code because the release of the information would interfere with the detection, investigation and/or prosecution of a crime.

Sylvia Borunda Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #375849/WO34516-012015

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SECTION 552.103, GOV'T CODE

The City asserts that it may withhold the information requested from Cases 08-346231, 11-176074, 12-225033 and 12-225033 under Section 552.103 of the Texas Government Code as it pertains to information relating to criminal litigation. Specifically, the City asserts that the first prong of the test under Section 552.103(a) is met in that the District Attorney has pending criminal cases against the offenders. The second prong of the test of Section 552.103(a) is met by the City's assertion that the requested records are evidence for the criminal litigation.

SECTION 552.103(a), GOV'T CODE

The City respectfully submits that Section 552.103(a) is intended to prevent the use of the Public Information Act as a method of avoiding the rules of discovery used in litigation. As such, release of this information from Cases 08-346231, 11-176074, 12-225033 and 12-225033 potentially would allow Arrestees'/Defendants' attorney to circumvent the system in order to obtain the requested information thus avoiding the rules of discovery and discovery procedures. *See* Open Records Decision 551 (1990).

Also, Cases 12-167059 and 13-060023 are currently in civil litigation, one in Federal Court and one in state District Court. As such, release of this information potentially would allow Arrestees'/Defendants' attorney to circumvent the system in order to obtain the requested information thus avoiding the rules of discovery and discovery procedures.

SECTION 552.108(a)(1) & (b)(1), GOV'T CODE

Police Department Case 07-084271 is currently pending investigation with the El Paso Police Department. The City submits that the records attached as part of **Exhibit "B"** are part of an ongoing investigation and should be exempt from disclosure pursuant to Section 552.108(a)(1) and (b)(1) of the Government Code because the release of the information would interfere with the detection, investigation and/or prosecution of a crime.

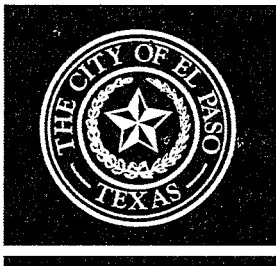
SECTION 58.007(c), FAMILY CODE

City submits that the requested information in Case No. 12-031117 is protected by a statutory grant of confidentiality, and therefore, it cannot be released. Section 552.101, Gov't Code, exempts from disclosure information that is confidential by law. The City respectfully submits that the records requested involve records of juveniles held by a law enforcement agency, and under the statute, this requestor is not eligible to receive juvenile records. Section 58.007(c), Family Code, makes the records of a juvenile held by a law enforcement agency confidential. These records can only be released to juvenile justice, criminal justice agencies and, in part, the child's parent.

SECTION 552.108(a)(2) & (b)(2), GOV'T CODE

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097



OFFICE OF THE CITY ATTORNEY

SECTION 552.108(a)(2) & (b)(2), GOV'T CODE

The City submits that Case Nos. 06-279017, 06-240181, 06-238006, 06-249004, 06-126064, 07-214337, 07-149388, 08-362004, 08-165087, 08-089291, 09-232121, 09-171002, 10-259009, 10-091238, 11-105304, 11-084013, 13-210036, 13-060023, and 14-293030 must be withheld pursuant to Section 552.108(a)(2) and (b)(2), Gov't Code, in that these cases did not result in a conviction or deferred adjudication.

SECTION 552.101, GOV'T CODE

The City submits that the information requested is protected by a statutory grant of confidentiality, a judicial grant of confidentiality, a common-law right of privacy and/or a constitutional right of privacy and therefore, is exempt from release pursuant to Section 552.101 of the Government Code. In order to avoid disclosure of all privileged information, the City has attached hereto **Exhibit "C"** which contains additional arguments for your consideration.

Also enclosed is our signed statement relating to the date of the receipt of the request.

Thank you for your time and consideration of our request. If you have any questions, or if I can provide you with anything further, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Ortiz", is written over the typed name.

Daniel Ortiz
Assistant City Attorney

DO:mkl
Enclosures

cc: Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston TX 77019
(without enclosures)

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097



OFFICE OF THE CITY ATTORNEY

Mayor

Oscar Leaser

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District 2

Larry Romero

District 3

Emma Acosta

District 4

Carl L. Robinson

District 5

Dr. Michiel R. Noe

District 6

Claudia Ordaz

District 7

Lily Limón

District 8

Cortney C. Niland

City Manager

Tommy Gonzalez

**SIGNED STATEMENT AS TO THE DATE OF
THE RECEIPT OF THE REQUEST**

Re: Open Records Decision Request for Mr. Scott A. Hooper

Pursuant to the requirement in §552.301(e)(1)(C), Gov't Code, we hereby provide you with this statement regarding the date of the receipt of the request.

The request from Mr. Hooper was received by the City of El Paso on January 12, 2015.

Please note that the official City Hall business hours for the City of El Paso are Monday through Thursday, 7:00 a.m. to 6:00 p.m. All offices in City Hall are closed on Fridays. Also, City Hall was closed on January 19, 2015. Subsequent to the date of receipt, the following days have been business days for the City of El Paso: January 13, 14, 15, 20, 21, 22, 26, 27, 28, 29 *, February 2, 3, 4, 5 and 9, 2015.

Very truly yours,

Daniel Ortiz
Assistant City Attorney

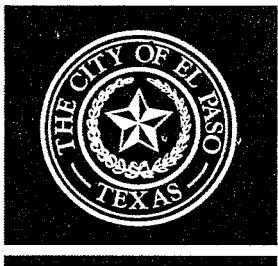
DO:mkl

* (See attached copy of letters sent to Requestor and Attorney General on January 29, 2015.)

Sylvia Borunda Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #375849/WO34516-012015

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COPIES OF LETTERS SENT JANUARY 29, 2015

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097



OFFICE OF THE CITY ATTORNEY

Mayor
Oscar Leeser

January 29, 2015

COPY

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City Manager
Tommy Gonzalez

Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston TX 77019


Re: Request for Records from El Paso Police Department

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The City believes the remainder of the information should be withheld and has asked for a decision from the Attorney General about whether such information is within exceptions to public disclosure. A copy of the letter submitted to the Attorney General is enclosed.

If you have any questions or comments, please feel free to contact me. Otherwise, the Attorney General will advise you of his decision.

Very truly yours,


Daniel Ortiz
Assistant City Attorney

DO:mkl

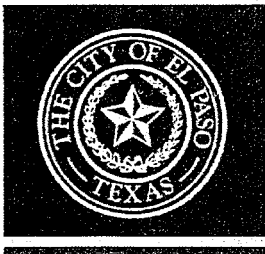
Enclosure

cc: Opinion Committee
Office of the Attorney General

Sylvia Borunda Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015

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OFFICE OF THE CITY ATTORNEY

COPY

Mayor
Oscar Leeser

January 29, 2015

Via Certified Mail
#91 7199 9991 7030 7746 7461

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District 2
Larry Romero

District 3
Emma Acosta

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Carl L. Robinson

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Dr. Michiel R. Noe

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Claudia Ordaz

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District 8
Cortney C. Niland

City Manager
Tommy Gonzalez

The Honorable Greg Abbott, Attorney General
Attn: Open Records Division, MC 014
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Open Records Decision Request of: Mr. Scott A. Hooper

Dear Attorney General Abbott and Committee Members:

I am writing this letter pursuant to Chapter 552.301 of the Texas Government Code to seek your opinion concerning whether certain requested information is exempted from release. When corresponding, please reference our case number assigned, **15-1026-5097**.

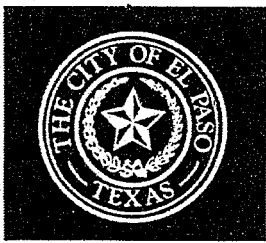
Mr. Scott A. Hooper has requested copies of all cases for all officer-involved shootings resulting in injury or death from 2004 to present from the El Paso Police Department. A copy of the request received by the City on January 12, 2015 is attached as **Exhibit "A."**

Specifically, the City claims that the requested information is excepted from disclosure as: (1) information made confidential by law under section 552.101 Government Code, to include information governed by the Texas Securities Act V.T.C.S art. 581-33 and the US Securities and Exchange Act of 1934 Section 10(b); (2) certain personnel information under section 552.102 GOV'T CODE; (3) information concerning litigation or settlement negotiations involving the state or a political subdivision under section 552.103 GOV'T CODE; (4) information pertaining to certain legal matters under section 552.107 GOV'T CODE; (5) information concerning certain law enforcement records under section 552.108 GOV'T CODE; (6) agency memoranda under section 552.111 GOV'T CODE; (7) information concerning certain addresses, telephone numbers, social security numbers, and personal family information of public officials and employees, peace officers, Texas Department of Criminal Justice Employees, and certain law enforcement personnel under section 552.117 GOV'T CODE; (8) confidentiality of addresses, telephone numbers, social security numbers, and personal family information of peace officers, county jailers, security officers, and employees of Texas Department of Criminal Justice or a prosecutor's office under section 552.1175 GOV'T CODE; (9) photographs of peace officers under section 552.119 GOV'T CODE; (10) motor vehicle inspection information under section 552.130 GOV'T CODE; (11) motor vehicle record information under section 552.131 GOV'T CODE; (12) the social

Sylvia Borunda Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.clpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015

Dedicated to Outstanding Customer Service for a Better Community



OFFICE OF THE CITY ATTORNEY

COPY

security number of living persons under section 552.147 GOV'T CODE; (13) public employee or officer personal safety under section 552.152 GOV'T CODE; (14) information excepted from disclosure as attorney client privileged information and attorney work product under sections 552.107 GOV'T CODE, 552.111 GOV'T CODE, Texas Rules of Evidence 503, and the Texas Rules of Civil Procedure rule 192.5, (15) juvenile records under FAMILY CODE SECTION 58.007(c); mental health records under Section 552.101, GOV'T CODE.

In accordance with section 552.301(e) of the Act, the City will be sending, within fifteen (15) business days of the date that it received the request for information: (1) written comments stating the reasons the stated exceptions apply that would allow the information at issue to be withheld from the requestor; (2) to the extent accessible, a copy of the specific information requested, or a representative sample of the information regarding which the City deems such exemptions apply; and (3) an additional copy of the written request for information.

Should you have any questions or concerns, please do not hesitate to contact me by telephone at (915) 212-1110.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Ortiz", is written over a horizontal line.

Daniel Ortiz
Assistant City Attorney

DO/ml
Enclosures

cc: Mr. Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston TX 77019
(without enclosures)

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097/Doc #372128/ W034516-012015

December 9, 2014

El Paso Police Department
Public Records Department
911 N. Raynor
El Paso, TX 79903

Re: Public Information Act Request for Records Relating to Officer Involved Shootings

Dear Sir/Madam:

Pursuant to the terms of the Texas Public Information Act, Texas Government Code §552.221, we hereby make request for the following documents, including all attachments thereto, concerning all incidents in which a law enforcement officer employed by your agency discharged a firearm resulting in injury or death of a human being from January 1, 2004 to present:

1. A complete copy of the incident report, police report and public information report.
2. Complete copies of all witness statements regarding each incident, including complete statistical data (dates of birth, Texas driver's license, etc.) on each witness.
3. A complete and legible copy of all "field notes" recorded by the investigating officer(s).
4. Complete copies of any inter-departmental memoranda sent or received by the investigating officer(s) regarding each incident.
5. A complete copy of any and all findings by any other parties relating to each incident.

The documents should be forwarded to:

Scott A. Hooper
2929 Allen Parkway, 39th Floor
Houston, Texas 77019

If there is a charge for the reproduction of these materials, please let me know, and we will remit payment promptly.

Respectfully,

15 JAN 12 PM2:00

Scott A. Hooper

EXHIBIT A
15-1026-5097



OFFICE OF THE CITY ATTORNEY

EXHIBIT "C"

Request from Mr. Scott Hooper
Submitted by the City of El Paso

This argument is submitted separately to avoid the possible release of information that is confidential by law.

The City additionally submits that some portions of the report for Case No. 08-34623 are separately and additionally exempt from disclosure as they contain information relating to the individual's mental state and mental health, which is information protected by common law rights of privacy.

In *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denies, 430 U.S. 931 (1977), the Texas Supreme Court ruled that the doctrine of common law privacy excepts "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided that "the information is not of legitimate concern to the public." *Id.*, at 683-85. The Court further defines an unwarranted invasion of the right of privacy as "the wrongful intrusion into one's private activities in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities." *Id.*, at 682, citing *Billings v. Atkinson*, 489 S.W.2d 858, 859 (Tex. 1973), quoting from 62 Am.Jur.2d, Privacy 1, p. 677.

We submit that the portions of the information in the report relating to the individual's mental health is of a highly intimate nature, the release of which would be highly objectionable to a reasonable person, and cause suffering, shame or humiliation to a person of ordinary sensibilities. It carries the rights of common law privacy and the first prong of the *Industrial Foundation*, supra, test is met. Under the second prong of the *Industrial Foundation* test, we submit that the personal information in this report is not of a legitimate concern to the public, due to the highly personal nature of the information. See, Open Records Decision No. 455 (1987) (concluding that information regarding prescription drugs, illnesses, operations and physical handicaps is protected by common law privacy; and No. 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication or emotional/mental distress is protected by common law privacy).

Therefore, we submit that this information in the report is not of a legitimate concern to the public and the information is separately and additionally exempted from disclosure under Section 552.101, Gov't Code, for the reasons noted above.

Sylvia Firth – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov
15-1026-5097

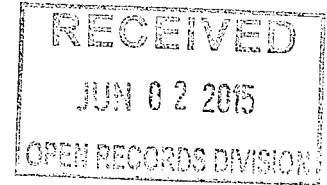
02-574259-15
574259

TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
Brandon S. Wood



P.O. Box 12985
Austin, Texas 78711
Voice: (512) 463-5505
Fax: (512) 463-3185
<http://www.tcjs.state.tx.us>
info@tcjs.state.tx.us



June 1, 2015

Hon. Ken Paxton
Attorney General of Texas
PO Box 12548
Austin, Texas 78711-2548

ATTENTION: Open Records Division

Re: Request for Public Information
Governmental Body: Texas Commission on Jail Standards
Requestor: Christine Stetson of Bernsen Law Firm
Date of Request: May 19, 2015
Date of Receipt/Read: May 19, 2015

Dear General Paxton:

Pursuant to Government Code 552, the Texas Public Information Act, the Texas Commission on Jail Standards respectfully seeks an opinion from the Texas Attorney General regarding the Commission's authority or obligation to withhold certain requested information from public disclosure: *items related to the custodial death investigations*. A copy of the request is enclosed.

In part, the request seeks access to information that, in our opinion, is exempt or excepted from disclosure. The Commission is withholding certain information that is responsive to the request pursuant to the following authority:

- Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime and the release of the information would interfere with the detection, investigation, or prosecution of the crime pursuant to section 552.108 of the Public Information Act.

The Commission will submit to your office timely written comments outlining the reasons why the stated exemptions or exceptions apply regarding the request for information and will submit copies of the relevant information or representative samples in accordance with the Act.

Stanley D. Egger, Abilene, Vice Chair
Irene A. Armendariz, Austin
Jerry W. Lowry, New Caney

Sheriff Dennis D. Wilson, Groesbeck
Sheriff Gary Painter, Midland

Dr. Michael M. Seale, M.D., Houston
Larry S. May, Sweetwater
Allan D. Cain, Carthage

TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
Brandon S. Wood



P.O. Box 12985
Austin, Texas 78711
Voice: (512) 463-5505
Fax: (512) 463-3185

Agency Website: <http://www.tcjs.state.tx.us>
E-mail Address: infor@tcjs.state.tx.us

The Commission has sent a response notice letter and a copy of this letter to the requestor. In addition, the Commission sent a notice letter to persons or entities whose privacy or property interests may be affected by the release of certain information

Respectfully yours,

A handwritten signature in cursive script that reads "Diana M. Spiller".

Diana Spiller
Research Specialist/Public Information Coordinator
Texas Commission on Jail Standards

cc: w/o Enclosures

ENCL: Public Information Request (Liberty)

BERNSEN

LAW FIRM

420 NORTH MLK, JR. PKWY
BEAUMONT, TEXAS 77701

409-212-9994

409-212-9411 (FAX)

May 19, 2015

Open Records Section
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711-2985

Via Facsimile 512/463-3185

Mr. Brandon S. Wood
Executive Director
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711-2985

Re: Liberty County Jail

Please allow this letter to serve as a formal request for certain information, possessed by the Texas Commission on Jail Standards, under the Texas Public Information Act, Chapter 552 of the TEX. GOV'T CODE. The information that we are requesting from your agency is as follows:

We hereby request the following information:

1. All facility inspection reports and/or audits produced by any employee of the Texas Commission on Jail Standards for the Liberty County Jail during the years 2010-2015.
2. All investigations of deaths occurring at the Liberty County Jail conducted by the Texas Commission on Jail Standards for the years 2010-2015.
3. All documents provided by to the Texas Commission on Jail Standards by the Liberty County Jail in connection with the death of Mr. Jeremy Keith Shomo.
4. All documents provided by to the Texas Commission on Jail Standards by the Liberty County Sheriff's Office in connection with the death of Mr. Jeremy Keith Shomo.
5. All documents provided by to the Texas Commission on Jail Standards by the Community Education Centers (CEC) in connection with the death of Mr. Jeremy Keith Shomo.

6. A copy of the "Health Services Plan" for the Liberty County Jail approved by the Texas Commission on Jail Standards in accordance with Chapter 273 of the Texas Administrative Code in effect during April 2015.
7. All documents relating to the reviewing and monitoring of the Liberty County Jail by the Texas Commission on Jail Standards for the years 2010-2015 as required by the Texas Administrative Code.
8. Any notifications/reports, whether in the form of a voice message or email from Liberty County Jail to the Texas Commission on Jail Standards within 24 hours of the custodial death of Mr. Jeremy Keith Shomo as required by § 269.4.
9. Any response from the Texas Commission on Jail Standards to any notification/report as set out in Request #8.
10. Any report generated by either Liberty County Jail or Correctional Education Centers regarding the custodial death of Mr. Jeremy Keith Shomo and sent to the Texas Commission on Jail Standards within 10 days of either the conclusion of the autopsy and/or investigation.
11. The April 2015 Paper-Ready Inmate Report for the Liberty County Jail and the April 2015 Paper-Ready Inmate Roster for the Liberty County Jail as required to be submitted to the Texas Commission on Jail Standards.

Please note we are willing to pay all reasonable copy charges for these documents (preferably in an electronic format). Please advise as to any such charges.

Respectfully,



Christine L. Stetson

TEXAS COMMISSION ON JAIL STANDARDS

OR-574259-15

EXECUTIVE DIRECTOR
Brandon S. Wood



575111

P.O. Box 12985
Austin, Texas 78711
Voice: (512) 463-5505
Fax: (512) 463-3185
<http://www.tcjs.state.tx.us>
info@tcjs.state.tx.us

June 8, 2015

Hon. Ken Paxton
Attorney General of Texas
PO Box 12548
Austin, Texas 78711-2548

#574259

Dear General Paxton:

Please accept this letter as a request for a ruling, pursuant to Government Code §552.301, to determine whether certain information regarding the Liberty County Jail may be excepted from public disclosure as requested through the Texas Public Information Act.

On May 19, 2015, the Texas Commission on Jail Standards (Commission) received via facsimile an 11-item request from Christine Stetson of the Bernsen Law Firm for Liberty County jail documents. The Commission has released or will release most of the documents. However, the Commission believes that documents related to the custodial deaths investigations in the Commission's possession are not subject to public disclosure under § 552.108.

In her request, Ms. Stetson asks for documents related to a named individual, as well as documents related to custodial deaths during a specific time period. The Commission, the state agency tasked with regulating county jails, researched its files and found three custodial deaths that were responsive to the public information request. Two of the deaths, including the named individual, occurred within one week of each other in February 2015. The remaining death occurred in 2010.

Liberty County objects to the release of documents related to custodial death documents. Liberty County advises two of the deaths remain under active investigation. The 2010 custodial death is a closed investigation that did not result in a conviction or deferred adjudication. Liberty County also advises the 2010 custodial death is under civil litigation. The enclosed letters from Liberty County provide a status update on each of the cases. A third-party letter was sent to Liberty County notifying them of the public information request.

Government §552.108 excepts from public disclosure information held by law enforcement and prosecutor's under investigation if release of the information would interfere with the detection, investigation, or prosecution of crime. Exhibit A and Exhibit B contain all documents related to active investigation of the 2015 custodial deaths. The Commission believes that the disclosure of these documents will provide undue influence and interfere with the Commission's duty, as well as Liberty County's duty, to investigate this incident.

Stanley D. Egger, Abilene, Vice Chair
Irene A. Armendariz, Austin
Jerry W. Lowry, New Caney

Sheriff Dennis D. Wilson, Groesbeck
Sheriff Gary Painter, Midland

Dr. Michael M. Seale, M.D., Houston
Larry S. May, Sweetwater
Allan D. Cain, Carthage

"The Commission on Jail Standards welcomes all suggestions and will promptly respond to all complaints directed against the agency or any facilities under its purview".
To empower local government to provide safe, secure and suitable local jail facilities through proper rules and procedures while promoting innovative programs and ideas

TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
Brandon S. Wood



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E-mail Address: infor@tcjs.state.tx.us

Government §552.108 (a)(2) excepts from public disclosure information held by law enforcement and prosecutors that deals with the detection, investigation, or prosecution of a crime in relation to a concluded investigation that did not result in conviction of deferred adjudication. This exception is to protect any future information or evidence that may be discovered, which may lead to a conviction. Exhibit C contains documents related to the 2010 custodial death.

For these reasons, the Texas Commission on Jail Standards is requesting that the aforementioned documents, be excepted for disclosure by the Commission and respectfully request a ruling by the Attorney General.

Respectfully yours,

A handwritten signature in cursive script that reads "Diana M. Spiller".

Diana Spiller
Research Specialist/Public Information Coordinator
Texas Commission on Jail Standards

cc: Christine Stetson without enclosures

ENCL: Exhibit A-C documents
Three Liberty County letters

**Liberty County Sheriff's Office
Criminal Investigation Division
2400 Beaumont Ave. ~ Liberty, TX 77575**

Captain Don Neyland
Office 936-336-4510 FAX 936-336-4536

May 28, 2015

Diana Spiller, MPA
Research Specialist
Texas Commission on Jail Standards

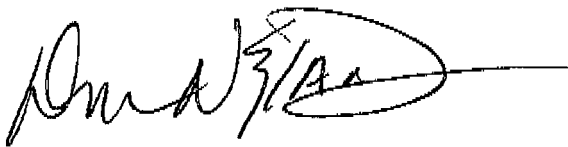
Reference: Public Information Request

Dear Diana Spiller,

The in-custody death investigation of Jeremy Shomo at the Liberty County Jail is still listed as active status by the Liberty County Sheriff's Office. Because of this active status the Liberty County Sheriff's Office wishes to have any documents concerning this matter withheld from public disclosure.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Neyland' with a stylized flourish at the end.

Don Neyland
C.I.D. Captain
don.neyland@co.liberty.tx.us

Liberty County Sheriff's Office
Criminal Investigation Division
2400 Beaumont Ave. ~ Liberty, TX 77575

Captain Don Neyland
Office 936-336-4510 FAX 936-336-4536

June 02, 2015

Diana Spiller, MPA
Research Specialist
Texas Commission on Jail Standards

Reference: Public Information Request

Dear Diana Spiller,

The in-custody death investigation of Beverly Ann Mooring at the Liberty County Jail is still listed as active status by the Liberty County Sheriff's Office. Because of this status the Liberty County Sheriff's Office wishes to have any documents concerning this matter withheld from public disclosure.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Don Neyland
C.I.D. Captain
don.neyland@co.liberty.tx.us

Liberty County Sheriff's Office
Criminal Investigation Division
2400 Beaumont Ave. ~ Liberty, TX 77575

Captain Don Neyland
Office 936-336-4510 FAX 936-336-4536

June 02, 2015

Diana Spiller, MPA
Research Specialist
Texas Commission on Jail Standards

Reference: Public Information Request

Dear Diana Spiller,

The in-custody death investigation of Noe Santos Jr., at the Liberty County Jail resulted in no criminal charges or indictments. The Liberty County Sheriff's Office is currently involved in civil litigation concerning the death of Mr. Santos. Because of this status the Liberty County Sheriff's Office wishes to have any documents concerning this matter withheld from public disclosure.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Don Neyland

C.I.D. Captain

don.neyland@co.liberty.tx.us

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-4283 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

RECEIVED

FEB 01 2016

OPEN RECORDS DIVISION

OR-604814-16
604814

January 26, 2016

Open Records Division
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Open Records Decision
Our File No.: W109619

Dear Sirs:

On January 14, 2016, the city of San Antonio received an open records request from Ashlei King. A copy of that request is enclosed. Also the City of San Antonio was closed on January 18, 2016 (Martin Luther King Day). The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

James Kopp
Assistant City Attorney

Enclosure

cc: Ashlei King -

(without enclosure)



City of San Antonio

Reference Number: W109619-011416

Date Submitted: 1/14/2016 3:22:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 1/29/2016 8:00:00 AM

Requestor:

Ashlei King

KABB FOX 29

210-383-2635

Information Requested: Police Records

Describe the document(s) you are requesting: - Complaints filed by citizens against San Antonio Police Officer Robert Encina. - Discipline/Outcome of the complaints filed by citizens against San Antonio Police Officer Robert Encina.

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-4283 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

RECEIVED

FEB 05 2016

OPEN RECORDS DIVISION

January 26, 2016

604814
605819

Open Records Division
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Open Records Decision
Our File No.: W109608

Dear Sirs:

On January 14, 2016, the city of San Antonio received an open records request from Artessia House. A copy of that request is enclosed. Also the City of San Antonio was closed on January 18, 2016 (Martin Luther King Day). The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

James Kopp
Assistant City Attorney

Enclosure

cc: AArtessia House -

(without enclosure)



City of San Antonio

Reference Number: W109608-011416

Date Submitted: 1/14/2016 2:33:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 1/29/2016 8:00:00 AM

Requestor:

Artessia House

Tess House Law, PLLC

111 Soledad

San Antonio, TX 78205

210-896-1884

Information Requested: Personnel Records

Describe the document(s) you are requesting: OPEN RECORDS REQUEST Chief of Police William McManus, San Antonio Police Department: Please accept this letter dated January 14, 2016 as a formal request under the Texas Public Information Act and the Freedom of Information Act Sections 552.021 et al. for any and all records or documents which relate to events that occurred on or around the evening of Thursday, February 27, 2014 until Friday, February 28, 2014 involving the shooting death of Marquise Jones by off-duty Officer Robert Encina, an officer of the San Antonio Police Department, at Chachos located on the 8600 block of Perrin Beitel Road. A response to this open records request is expected by no later than Friday, February 3, 2016 at 4:00pm CST. This request for open records is being submitted due to the lack of transparency that has resulted from the withholding pertinent information such as a photo of San Antonio Police Officer Robert Encino. This request is being submitted to determine whether or not Mike Helle, President of the San Antonio Police Officers Association has wrongfully interfered with access to information requested by tax payers of this city. A more detailed description of the records requested is as follows: 1) Any and all information in the DISCIPLINARY RECORD of Officer Robert Encina; 2) Photographs of Officer Robert Enina; 3) Personnel Records for Officer Robert Encina; 4) Internal Affairs Investigation Records; 5) Finding on whether or not Officer Robert Encina has been an officer or served on any committees including ad hoc committees for the San Antonio Police Officers Association; 6) Personnel Records for Officer Robert Encina; 7) Whether or not Officer Robert Encina is related to any officers of the San Antonio Police Officerâ€™s Association; 8) List of Officer Robert Encinaâ€™s family members in law enforcement who are now serving or have been members of the San Antonio Police Officerâ€™s Association. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. If you have any questions regarding this request, please contact the following: Tommy Calvert Sr. at (210) 226-9041, Taj Matthews (904) 333-7504, Rev. Otis Mitchell (210) 533-7131, and Former City councilman Mario Salas

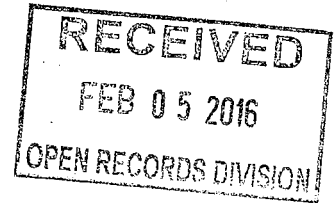
(210) 454-3875. We look forward to receiving your response within the ten-day statutory time period. Thank you for your consideration of this request. Please send certified copies of the requested documents, reports or information to the attention of Rev. Otis Mitchell at the 3333 Martin Luther King Drive, San Antonio, Texas 78220. The organizations that have come together to submit this request are non-profit, community based church, civil and social organizations. As a result, we are requesting these documents be made available to us at no charge. Thank you for your assistance in this matter. Please call if you have any questions or if this request is deficient in any way. Respectfully Submitted By: Rev. Paul Stevens, Baptist Ministers Union of San Antonio; Rev. Otis Mitchell, Pastor Mt. Zion First Baptist Church; Rev. Ronald Benson, Bethany First Baptist Church; Rev. Patrick Jones, Greater Pilgrim Rest Baptist Church; Former City Councilman Mario Salas, Chairman of the San Antonio Coalition for Human and Civil Rights; Taj Matthews, Claude and ZerNona Black Foundation; Minister Cedric E. Muhammad, Nation of Islam; T.C. Calvert, Sr., Neighborhoods First Alliance; Michael Lowe, SATX4; Rev. Paul Wilkerson, New Light Baptist Church; Dr. Kenneth Kemp, Antioch Baptist Church; and Clyde Foster, Research Director San Antonio Coalition for Human and Civil Rights cc. Loretta Lynch, Attorney General, United States Department of Justice; U.S. Congressman Joaquin Castro, 20th Congressional District; U.S. Congressman Lamar Smith, 21st Congressional District; Pamela Meanes, National Bar Association; Martin Luther King III, Human Rights and Community Activist; Rev. Al Sharpton, National Action Network; Rev. Jesse Jackson, Rainbow Push Coalition; Edward Pena, American Civil Liberties Union; ; Henry Rodriguez, Zapista LULAC Council; Cochran Law Firm; Gary Bledsoe, NAACP State President; Mayor Ivy Taylor, San Antonio; Sheryl Sculley, City Manager of San Antonio; Nicholas "Nico" LaHood, Bexar County District Attorney; San Antonio Express-News; San Antonio Observer; WOAI; KSAT; and KENS.

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

February 4, 2016



Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

604814
605821

Re: Request for Ruling

Requestor:

Artesia House

Gilbert Garcia, Express News

Ashlei King, KABB Fox 29

Date request received:

January 14, 2016

February 3, 2016

January 14, 2016

COSA File No.:

W109608

W111847

W109619

Dear Assistant Attorney General:

Two open records requests were received from Artesia House and Gilbert Garcia, on different dates as listed above, for the same information, which involves a specific event and the personnel file of a San Antonio Police Officer [Attachment 1]. A similar request was received on January 14, 2016, from Ashlei King. January 18, 2016, was a city holiday, Martin Luther King Day, so city offices were closed. In request Nos. W109608 and W109619, on January 26, 2016, the city sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [Attachment 2]. By this Request for a Ruling, the city now submits a representative sample of the records at issue, and legal argument supporting the application of the exceptions claimed [Attachment 3]. There are a few documents to which there are no objections, which will be released to all three requestors.

Background Information

The Bexar County District Attorney's Office reviewed the facts surrounding the event related to this request, and a Grand Jury No Billed criminal prosecution on December 16, 2015. The City of San Antonio has previously requested a ruling from the Attorney General's Office, and an opinion was issued under OR2014-09145. At that time, as to the police reports the Attorney General's Office ruled that the documents could be withheld based upon an open investigation. The circumstances have now changed, and the investigation is closed. As to the personnel file, although the investigation did not result in discipline as defined for purposes of Section 143.089(a)(2), there are additional documents than were previously provided to the Attorney General's Office at the time of the ruling under OR2014-09145.

Arguments and Authorities

A. Section 552.108(a)(2) (Closed Investigation, No Conviction)

The requested information is related to a closed criminal investigation. The investigation did not result in a conviction or deferred adjudication. The city believes, then, that the requested information is excepted from required disclosure by section 552.108(a)(2) of the Texas Government Code.

B. Section 552.101 (Confidential Information)(Police Personnel File)

Section 552.101 excepts information from disclosure if it is considered confidential by law. The employment of sworn members of the SAPD is governed by chapter 143 of the Texas Local Government Code. Subsection 143.089(g) of that chapter prohibits the release of the department files of those employees subject to chapter 143. As is required by subsection 143.089(g), a copy of this request has been forwarded to the San Antonio Fire Fighters and Police Officers Civil Service Commission. The information in the Civil Service file will be released to requestor. The city believes that, in light of subsection 143.089(g), section 552.101 of the Texas Government Code prohibits the release of the attached requested information, which is maintained in the San Antonio Police Department personnel file.

C. Section 552.101 (Common Law Privacy)(Medical Information)

The requested medical information includes is protected from disclosure under the principles of common law privacy. This information is protected under *Indus. Found. V. Tex. Indus. Accident Bd.*, 540 S.W. 2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The attachment contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and of no legitimate concern to the public.

D. Section 552.101 (LGC Sec. 143.090)(Photographs of Police Officers)

Section 552.101 excepts information from disclosure considered confidential by law. Section 143.090 of the Local Government Code, states:

A department, commission, or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding; or
- (4) the officer gives written consent to the release of the photograph.

None of the listed exceptions apply to the current request. The city believes that in light of this provision, release of the attached requested information is prohibited.

E. Section 552.101 (Dates of Birth)

The requested information includes dates of birth. This information is protected under *Indus. Found. V. Tex. Indus. Accident Bd.*, 540 S.W. 2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Paxton v. City of Dallas*, No. 03-13-00546-CV (Tex.App.-Austin, May 22, 2015, pet. Denied)(mem.op.). As to the documents on which this objection is made, these documents were previously released with the dates of birth unredacted, prior to the *Paxton* decision.

F. Section 552.101 (Health and Safety Code Section 772.218)

The requested information includes originating numbers and addresses for 911 caller information. This information is protected from disclosure under Texas Health and Safety Code Section 772.218. Bexar County has a population of 1.82 million, and the City of San Antonio is part of Bexar Metro 911, a communications district established under Section 772.218.

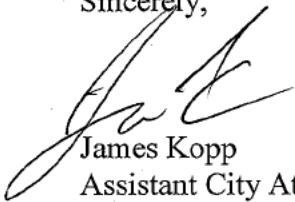
G. Section 552.117 and 552.1175 (Personal Information of Peace Officers)

Section 552.117 and 552.1175 make confidential the home address, home telephone number, social security number, date of birth, and whether a person has family members. This protects the requested information from disclosure.

Conclusion

For the reasons set forth in this letter, the city seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,



James Kopp
Assistant City Attorney

cc: Artessia House:
Gilbert Garcia:
Ashlei King:

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W109608-011416

Date Submitted: 1/14/2016 2:33:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 1/29/2016 8:00:00 AM

Requestor:

Artessia House
Tess House Law, PLLC
111 Soledad
San Antonio, TX 78205
210-896-1884

Information Requested: Personnel Records

Describe the document(s) you are requesting: OPEN RECORDS REQUEST Chief of Police William McManus, San Antonio Police Department: Please accept this letter dated January 14, 2016 as a formal request under the Texas Public Information Act and the Freedom of Information Act Sections 552.021 et al. for any and all records or documents which relate to events that occurred on or around the evening of Thursday, February 27, 2014 until Friday, February 28, 2014 involving the shooting death of Marquise Jones by off-duty Officer Robert Encina, an officer of the San Antonio Police Department, at Chachos located on the 8600 block of Perrin Beitel Road. A response to this open records request is expected by no later than Friday, February 3, 2016 at 4:00pm CST. This request for open records is being submitted due to the lack of transparency that has resulted from the withholding pertinent information such as a photo of San Antonio Police Officer Robert Encino. This request is being submitted to determine whether or not Mike Helle, President of the San Antonio Police Officers Association has wrongfully interfered with access to information requested by tax payers of this city. A more detailed description of the records requested is as follows: 1) Any and all information in the DISCIPLINARY RECORD of Officer Robert Encina; 2) Photographs of Officer Robert Enina; 3) Personnel Records for Officer Robert Encina; 4) Internal Affairs Investigation Records; 5) Finding on whether or not Officer Robert Encina has been an officer or served on any committees including ad hoc committees for the San Antonio Police Officers Association; 6) Personnel Records for Officer Robert Encina; 7) Whether or not Officer Robert Encina is related to any officers of the San Antonio Police Officerâ€™s Association; 8) List of Officer Robert Encinaâ€™s family members in law enforcement who are now serving or have been members of the San Antonio Police Officerâ€™s Association. As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. If you have any questions regarding this request, please contact the following: Tommy Calvert Sr. at (210) 226-9041, Taj Matthews (904) 333-7504, Rev. Otis Mitchell (210) 533-7131, and Former City councilman Mario Salas

Attachment,

(210) 454-3875. We look forward to receiving your response within the ten-day statutory time period. Thank you for your consideration of this request. Please send certified copies of the requested documents, reports or information to the attention of Rev. Otis Mitchell at the 3333 Martin Luther King Drive, San Antonio, Texas 78220. The organizations that have come together to submit this request are non-profit, community based church, civil and social organizations. As a result, we are requesting these documents be made available to us at no charge. Thank you for your assistance in this matter. Please call if you have any questions or if this request is deficient in any way. Respectfully Submitted By: Rev. Paul Stevens, Baptist Ministers Union of San Antonio; Rev. Otis Mitchell, Pastor Mt. Zion First Baptist Church; Rev. Ronald Benson, Bethany First Baptist Church; Rev. Patrick Jones, Greater Pilgrim Rest Baptist Church; Former City Councilman Mario Salas, Chairman of the San Antonio Coalition for Human and Civil Rights; Taj Matthews, Claude and ZerNona Black Foundation; Minister Cedric E. Muhammad, Nation of Islam; T.C. Calvert, Sr., Neighborhoods First Alliance; Michael Lowe, SATX4; Rev. Paul Wilkerson, New Light Baptist Church; Dr. Kenneth Kemp, Antioch Baptist Church; and Clyde Foster, Research Director San Antonio Coalition for Human and Civil Rights cc. Loretta Lynch, Attorney General, United States Department of Justice; U.S. Congressman Joaquin Castro, 20th Congressional District; U.S. Congressman Lamar Smith, 21st Congressional District; Pamela Meanes, National Bar Association; Martin Luther King III, Human Rights and Community Activist; Rev. Al Sharpton, National Action Network; Rev. Jesse Jackson, Rainbow Push Coalition; Edward Pena, American Civil Liberties Union; ; Henry Rodriguez, Zapista LULAC Council; Cochran Law Firm; Gary Bledsoe, NAACP State President; Mayor Ivy Taylor, San Antonio; Sheryl Sculley, City Manager of San Antonio; Nicholas "Nico" LaHood, Bexar County District Attorney; San Antonio Express-News; San Antonio Observer; WOAI; KSAT; and KENS.

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-4283 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

January 26, 2016

Open Records Division
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Open Records Decision
Our File No. W109608

Dear Sirs:

On January 14, 2016, the city of San Antonio received an open records request from Artesia House. A copy of that request is enclosed. Also the City of San Antonio was closed on January 18, 2016 (Martin Luther King Day). The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

James Kopp
Assistant City Attorney

Enclosure

cc: AArtesia House -

(without enclosure)

Attachment 2



City of San Antonio

Reference Number: W111847-020316

Date Submitted: 2/3/2016 3:57:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 2/17/2016 8:00:00 AM

Requestor:

Gilbert Garcia

Express News

2707 Old Moss Road

San Antonio, TX 78217

210-392-1566

Information Requested: [typeinfo]

Describe the document(s) you are requesting: Any and all records or documents which relate to events that occurred on or around the evening of Thursday, February 27, 2014 until Friday, February 28, 2014 involving the shooting death of Marquise Jones by off-duty Officer Robert Encina, an officer of the San Antonio Police Department, at Chachos located on the 8600 block of Perrin Beitel Road. A more detailed description of the records requested is as follows: 1) Any and all information in the DISCIPLINARY RECORD of Officer Robert Encina; 2) Photographs of Officer Robert Encina; 3) Personnel Records for Officer Robert Encina; 4) Internal Affairs Investigation Records; 5) Finding on whether or not Officer Robert Encina has been an officer or served on any committees including ad hoc committees for the San Antonio Police Officers Association; 6) Personnel Records for Officer Robert Encina; 7) Whether or not Officer Robert Encina is related to any officers of the San Antonio Police Officers' Association; 8) List of Officer Robert Encina's family members in law enforcement who are now serving or have been members of the San Antonio Police Officers Association.

Attachment 1



City of San Antonio

Reference Number: W109619-011416

Date Submitted: 1/14/2016 3:22:00 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 1/29/2016 8:00:00 AM

Requestor:

Ashlei King

KABB FOX 29

210-383-2635

Information Requested: Police Records

Describe the document(s) you are requesting: - Complaints filed by citizens against San Antonio Police Officer Robert Encina. - Discipline/Outcome of the complaints filed by citizens against San Antonio Police Officer Robert Encina.

Attachment 1

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-4283 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

January 26, 2016

Open Records Division
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Open Records Decision
Our File No.: W109619

Dear Sirs:

On January 14, 2016, the city of San Antonio received an open records request from Ashlei King. A copy of that request is enclosed. Also the City of San Antonio was closed on January 18, 2016 (Martin Luther King Day). The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

James Kopp
Assistant City Attorney

Enclosure

cc: Ashlei King -

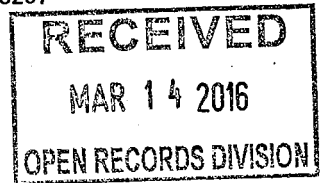
(without enclosure)

Attachment 2

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207



March 11, 2016

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

604814
610735
Via First Class Mail

Re: AG File Number 604814
COSA File No. W109619

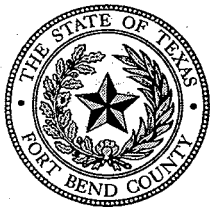
Dear Assistant Attorney General:

Earlier this week I was notified that a computer disc that was sent to the Attorney General's Office attached to the above numbered Request for Ruling was damaged or would not open. The disc was labeled: IL 2010-188. Enclosed is a replacement disc. Please let me know if there is anything else I can do to assist on this request.

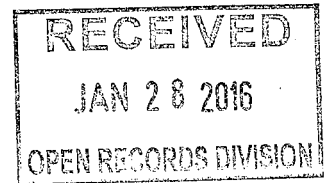
Sincerely,

A handwritten signature in black ink, appearing to read "James Kopp".

James Kopp
Assistant City Attorney



COUNTY ATTORNEY
Fort Bend County, Texas



ROY L. CORDES, JR.
County Attorney

(281) 341-4555
Fax (281) 341-4557

January 26, 2016

02-604263-16
604263

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CMRR # 7014 2120 0004 3063 4669

RE: Public Information Act Request
From:
To: Fort Bend County Sheriff's Office
Re: Release of records not subject to public disclosure

Dear Attorney General Paxton:

Enclosed please find the following documents:

1. **Exhibit A:** A copy of the request for public information received by the Fort Bend Sheriff's Office on January 11, 2016.

Please be advised that the Fort Bend County Sheriff's Office received the enclosed request for public information on January 11, 2016, from Bruce Denney for various records. *See Exhibit A.* Please also be advised that Fort Bend County Offices were closed Monday January 18, 2016 in observance of the Dr. Martin Luther King, Jr. holiday.

We believe that some of the information requested may be protected from release under the Public Information Act. We hereby give notice that the information may be excepted from release under any and all exceptions to the Act, to include but is not limited to, sections 552.101, 552.103, 552.107, 552.108, 552.111 and 552.130.


This office will identify any responsive records believed to be excepted and will provide that material with our more detailed brief at a later date, not to exceed 15 business days from the date the request was originally received. By copy of this letter, the Requestor is hereby notified of Fort Bend County's intention to withhold these records from disclosure, if such records exist.

Thank you in advance for your assistance with this matter. Please do not hesitate to contact me if you have any questions regarding this matter. I can be reached at (281) 341-4555 or via e-mail: Matthew.Grove@fortbendcountytexas.gov.

Very truly yours,

ROY L. CORDES, JR.
FORT BEND COUNTY ATTORNEY

By:



Matthew L. Grove
Assistant County Attorney

Enclosure

cc: Fort Bend County Sheriff's Office

Mr. Bruce Denney
Via Email:

Grove, Matthew

Ex. A

From: Bruce Denney
Sent: Monday, January 11, 2016 11:22 AM
To: Grove, Matthew
Subject: Open Records Request
Attachments: Open Records Request.docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Open Records

Mr. Grove,

Attached is an Open Records Request. Kindly acknowledge receipt of the request by email. I am willing to pay reasonable costs associated with this request. If clarification is needed please contact me. I have included a phone number at the bottom of this request.

Thank you for your prompt attention.

Bruce L. Denney
PO Box 203
Richmond, Texas 77406-0203
281-705-6658

Bruce L. Denney
P.O. Box 203
Richmond, Texas 77406-0203
Email: _____
Contact number: 281-705-6658

January 11, 2016

*Fort Bend County Attorney's Office
Richmond, Texas 77469*

TO: *Matthew Grove, assistant county attorney*
REF: *Open records request*

SENT VIA EMAIL

Pursuant to the Freedom of Information Act and the Texas Open Record Statute(s) I am requesting the following information:

- 1 The name, rank, H.R. position number, annual salary, hire date, grade and step number for all employees at the Fort Bend County Sheriff's Office.*
- 2 The name, rank, H.R. position number, annual salary, hire date, grade and step number for all employees at the (4) Fort Bend County Constables Offices.*
- 3 Please provide a list of all employees who have left the Fort Bend County Sheriff's Office (for whatever reason) including the exit interview documents on each separated employee since January 1, 2013*
- 4 Please provide copies of all "General Orders" and policies and procedures of the Fort Bend County Sheriff's Office which were effective on 01/01/2016.*
- 5 Please provide copies all reports with assigned Fort Bend County Sheriff's Office case numbers regarding all "In Custody Deaths" at the Fort Bend County Sheriff's Office since January 1, 2013.*
- 6 Please provide copies of all background investigations or pre-employment investigations on the following person(s) employed with the Fort Bend County Sheriff's Office who were hired on or about January 1, 2013:*
 - a. Chief Deputy David Marcaurele*
 - b. Major "Chad" Norvell*
 - c. Major James W. Hines*
 - d. Major Thomas Goodfellow*
 - e. Captain Steve Holtz*
 - f. Captain Jule G. Brownfield.*

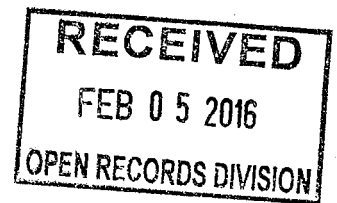
7. *Captain Jule G. Brownfield applied for employment with the Fort Bend County Sheriff's In 2010 or 2011 and was rejected for employment. Please provide all documents in this employment process. Please list the specific reason(s) for rejection or no hire.*
8. *Please provide documents which are required by TCOLE before hiring a person who is issued a peace officer license under Texas Occupation Code 1701.451 on the following employees:*
 - a. *Chief Deputy David Marcaurele*
 - b. *Major "Chad" Norvell*
 - c. *Major James W. Hines*
 - d. *Major Thomas E. Goodfellow*
 - e. *Captain Steve Holtz*
 - f. *Captain Jule G. Brownfield*
9. *Please provide the email address with corresponding name for all employees of the Fort Bend County Sheriff's Office.*
10. *Please provide the current operating budget for the Fort Bend County Sheriff's Office.*
11. *Please provide copies of all written reprimands issued to employees under the command Major Hines and Major Goodfellow.*
12. *Please provide the number of personnel under the command of the following:*
Major James Hines
Major Thomas Goodfellow
Major "Chad" Norvell
13. *Please provide the date, time, reason, and number of flight hours on all assignments of any helicopter owned or leased by the Fort Bend County Sheriff's Office. Please provide names of all passengers on board the aircraft and their reason for being in the aircraft.*

Thank you for your prompt attention to this request. Should clarification be needed I can be reached at the contact information listed at the top of page one. I am willing to pay reasonable cost(s) for this request.

Kindly acknowledge receipt of this email request.



COUNTY ATTORNEY
Fort Bend County, Texas



ROY L. CORDES, JR.
County Attorney

(281) 341-4555
Fax (281) 341-4557

February 2, 2016

604263
605451

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CMRR # 7014 2120 0004 3063 4676

RE: Public Information Act Request ID#604263
From: Bruce Denney
To: Fort Bend County Sheriff's Office
Re: Release of records not subject to public disclosure under §§ 552.101 and 552.108 of the Government Code.

Dear Attorney General Paxton:

Enclosed please find the following documents:

1. **Exhibit A:** A copy of the request for public information received on January 11, 2016;
2. **Exhibit B:** A copy of the correspondence from Your Office and a copy of the letter sent by this office notifying Your Office that an opinion would be requested;
3. **Exhibit C:** Copies of the requested records not released to the Requestor believed to be subject to 552.101 and 552.108;
4. **Exhibit D:** Copies of the requested records not released to the Requestor believed to be subject to 552.101; and
5. **Exhibit E:** Copies of the requested records not released to the Requestor believed to be subject to 552.108.

Please be advised that the Fort Bend County Sheriff's Office received the enclosed request for public information on January 11, 2016, from Bruce Denney for various records. *See* Exhibit A. This office sent Your Office a letter notifying You that this office would seek an opinion for any privileges or exceptions regarding the responsive records that may apply, and received confirmation from Your Office that it was received. *See* Exhibit B. Please also be advised that Fort Bend County Offices were closed Monday January 18, 2016 in observance of the Dr. Martin Luther King, Jr. holiday.

It is the opinion of this office that § 552.101 of the Government Code applies to this request. According to § 552.101 of the Government Code, "[i]nformation is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Section 552.101 encompasses information protected by common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Supreme Court included information relating to: sexual assault; pregnancy; mental or physical abuse in the workplace; illegitimate children; psychiatric treatment of mental disorders; attempted suicide; and injuries to sexual organs. *Id.* at 683. Your Office has also found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987)(illness from severe emotional and job-related stress), 455 (1987)(prescription drugs, illnesses, operations, and physical handicaps). As you will see from your review of Offense Reports #15-38451 (PA15601C), #13-5610 (PA13129C), 13-29478 (PA13549CJ), 15-3425 (PA15052C), and 15-1621/15-1629 (PA15018C), attached as Exhibit C, these records contain information that is protected under common law privacy.

Your Office has previously interpreted 552.101 to protect personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992)(public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). As you will see from your review of Exhibit D, these documents contain information that is protected under common law privacy.

Section 552.101 of the Government Code also excepts from required public disclosure information that other statutes make confidential. Criminal history record information ("CHRI") generated by the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself"). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. Additionally, section 411.083 of the Government Code deems confidential CHRI maintained by the Texas Department of Public Safety ("DPS"), except that the DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. A criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. Furthermore, when a law enforcement agency compiles information that identifies a particular individual as a

criminal suspect, arrested person, or defendant, the compilation of criminal history information takes on a character that implicates the individual's common law privacy interests in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). As you will see from your review of Exhibit D, the information requested contains criminal records that are confidential and not subject to public disclosure.

Section 552.101 encompasses confidentiality provisions such as those contained in § 411.192 of the Government Code. According to § 411.192(a) of the Government Code, "[t]he department shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552." As you will see from your review of Exhibit D, these records contain information that is confidential under § 411.192 of the Government Code.

It is also the opinion of this office that § 552.108 of the Government Code applies to this request. According to § 552.108 of the Government Code, "(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from the requirements of Section 552.021 if (1) release of the information would interfere with the detection, investigation, or prosecution of crime; ... (b) an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if: (1) the release of the internal record or notation would interfere with law enforcement or prosecution...."

This office has been advised that offense reports #15-38451 (PA15601C) and #13-5610 (PA13129C) and any related records are currently pending with the Fort Bend County Sheriff's Office. The release of the requested information (attached as Exhibit C) could interfere with the prosecution and/or investigation of this case if the information was made available to the potential suspect(s) and/or potential defendant(s). The potential suspect(s) and/or potential defendant(s) could utilize the requested information to hinder the investigation and possible prosecution of this case, as well as exert undue influence on the witnesses. As you will see from your review of the records attached as Exhibit C, the requested information contains officer statements, notes, and thought processes with regards to this investigation. The release of this information could potentially hinder the investigation or prosecution of this case if it was released to the public and used to defend the potential defendant(s) in any criminal and/or civil action that may be filed. Additionally, Your Office previously issued an opinion, OR2015-22473, regarding the records related to 15-30990 (PA15493C). The Fort Bend County Sheriff's Office has indicated that the status of the case has not changed and will rely on the previous opinion for withholding the information and release the basic information.

It is also the opinion of this office that § 552.108 of the Government Code applies to this request. According to § 552.108 of the Government Code, "(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from the requirements of Section 552.021 if: ... (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not

result in conviction or deferred adjudication; ...(b) an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if: (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication...."

According to the Fort Bend County Sheriff's Office, Offense Reports #13-29478 (PA13549CJ), #15-4722 (PA15114C), #15-3425 (PA15052C), and #15-1621/15-1629 (PA15018C) are closed. As such, the responsive records, attached as Exhibit C, relate to the detection, investigation, or prosecution of crimes that did not result in conviction or deferred adjudication and are excepted from the requirements of Section 552.021.

It is the opinion of this office that § 552.108 of the Government Code applies to this request. According to § 552.108 of the Government Code, "(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from the requirements of Section 552.021 if (1) release of the information would interfere with the detection, investigation, or prosecution of crime; ...(b) an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if: (1) the release of the internal record or notation would interfere with law enforcement or prosecution...."

The General Orders, Jail Policies and Procedures, Written Reprimands, and Flight Logs (attached as Exhibit E) detail the various policies and protocols utilized and followed by the Fort Bend County Sheriff's Office deputies when investigating crimes, gathering evidence, booking suspected offenders, searching suspected jail inmates, and other various procedures relating to law enforcement duties. The release of the requested information (Exhibit E) could interfere with the prosecution and/or investigation of cases if the information was made available to the potential suspect(s) and/or potential defendant(s). The potential suspect(s) and/or potential defendant(s) could utilize the requested information to: hinder investigations and possible prosecutions of cases; exert undue influence on any witnesses; thwart investigations; and endanger jail inmates and officers. By obtaining this information, potential suspect(s) and/or potential defendant(s) would be able to evade law enforcement and prosecutions because they would know the policies and protocols utilized by the Sheriff's Office in carrying out their law enforcement duties. Also, the release of this information could potentially hinder investigations or prosecutions of cases if it was released to the public and used to defend the potential defendant(s) in any criminal and/or civil actions that may be filed.

Therefore, the attached Exhibits C, D, and E and the responsive drawings, photographs, audio recordings and video recordings and any other related records are not being provided at this time, subject to review by your office. The attached Exhibit C is representative of the information contained in the responsive drawings, photographs, audio recordings, and video recordings. Your assistance is respectfully and timely requested in determining whether these records are excepted from disclosure. By copy of this letter, the Requestor is hereby notified of Fort Bend County's intention to withhold these records from disclosure. Thank you in advance for your assistance with this matter.

Very truly yours,

ROY L. CORDES, JR.
FORT BEND COUNTY ATTORNEY

By: 
Matthew Grove
Assistant County Attorney

Enclosures

cc: Fort Bend County Sherriff's Office (w/o enclosures)

Bruce Denney (w/o enclosures)

Via Email:

Exhibit A

Grove, Matthew

From: Bruce Denney
Sent: Monday, January 11, 2016 11:22 AM
To: Grove, Matthew
Subject: Open Records Request
Attachments: Open Records Request.docx

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Open Records

Mr. Grove,

Attached is an Open Records Request. Kindly acknowledge receipt of the request by email. I am willing to pay reasonable costs associated with this request. If clarification is needed please contact me. I have included a phone number at the bottom of this request.

Thank you for your prompt attention.

Bruce L. Denney
PO Box 203
Richmond, Texas 77406-0203
281-705-6658

Bruce L. Denney
P.O. Box 203
Richmond, Texas 77406-0203
Email:
Contact number: 281-705-6658

January 11, 2016

Fort Bend County Attorney's Office
Richmond, Texas 77469

TO: *Matthew Grove, assistant county attorney*
REF: *Open records request*

SENT VIA EMAIL

Pursuant to the Freedom of Information Act and the Texas Open Record Statute(s) I am requesting the following information:

- 1 The name, rank, H.R. position number, annual salary, hire date, grade and step number for all employees at the Fort Bend County Sheriff's Office.*
- 2 The name, rank, H.R. position number, annual salary, hire date, grade and step number for all employees at the (4) Fort Bend County Constables Offices.*
- 3 Please provide a list of all employees who have left the Fort Bend County Sheriff's Office (for whatever reason) including the exit interview documents on each separated employee since January 1, 2013*
- 4 Please provide copies of all "General Orders" and policies and procedures of the Fort Bend County Sheriff's Office which were effective on 01/01/2016.*
- 5 Please provide copies all reports with assigned Fort Bend County Sheriff's Office case numbers regarding all "In Custody Deaths" at the Fort Bend County Sheriff's Office since January 1, 2013.*
- 6 Please provide copies of all background investigations or pre-employment investigations on the following person(s) employed with the Fort Bend County Sheriff's Office who were hired on or about January 1, 2013:*
 - a. Chief Deputy David Marcaurele*
 - b. Major "Chad" Norvell*
 - c. Major James W. Hines*
 - d. Major Thomas Goodfellow*
 - e. Captain Steve Holtz*
 - f. Captain Jule G. Brownfield.*

7. *Captain Jule G. Brownfield applied for employment with the Fort Bend County Sheriff's In 2010 or 2011 and was rejected for employment. Please provide all documents in this employment process. Please list the specific reason(s) for rejection or no hire.*
8. *Please provide documents which are required by TCOLE before hiring a person who is issued a peace officer license under Texas Occupation Code 1701.451 on the following employees:*
 - a. *Chief Deputy David Marcaurele*
 - b. *Major "Chad" Norvell*
 - c. *Major James W. Hines*
 - d. *Major Thomas E. Goodfellow*
 - e. *Captain Steve Holtz*
 - f. *Captain Jule G. Brownfield*
9. *Please provide the email address with corresponding name for all employees of the Fort Bend County Sheriff's Office.*
10. *Please provide the current operating budget for the Fort Bend County Sheriff's Office.*
11. *Please provide copies of all written reprimands issued to employees under the command Major Hines and Major Goodfellow.*
12. *Please provide the number of personnel under the command of the following:*
Major James Hines
Major Thomas Goodfellow
Major "Chad" Norvell
13. *Please provide the date, time, reason, and number of flight hours on all assignments of any helicopter owned or leased by the Fort Bend County Sheriff's Office. Please provide names of all passengers on board the aircraft and their reason for being in the aircraft.*

Thank you for your prompt attention to this request. Should clarification be needed I can be reached at the contact information listed at the top of page one. I am willing to pay reasonable cost(s) for this request.

Kindly acknowledge receipt of this email request.

Exhibit B

**Office of the Attorney General
Facsimile Cover Sheet**

CONFIDENTIALITY NOTICE

The information contained in this facsimile transmission is confidential. It may also be subject to the attorney-client privilege, work product or proprietary information. This information is intended for the exclusive use of the addressee named below. If you are not the intended recipient, you are hereby notified that any use, disclosure, dissemination, distribution (other than to the addressee named below), copying, or the taking of any action because of this information is strictly prohibited. If you have received this information in error, please immediately notify us by telephone to arrange for the return of the documents.

To: Matthew L. Grove

Company:

Phone:

Fax: 281-341-4557

From: Susan Berger

Company: Open Records Division
P.O. Box 12548 Austin, Tx. 78711-2548

Sender's Fax: (512) 370 9070

Sender's Telephone: (512) 936-1396

Division Fax:

Division Telephone:

Pages (including cover page): 03

Comments:



OFFICE OF THE ATTORNEY GENERAL
OPEN RECORDS DIVISION

P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 936-OPEN [6736]

Date: February 2, 2016
Please deliver to: Matthew L. Grove
County of Fort Bend
Facsimile number: (281) 341-4557
Re: Request for name, rank, position#, annual salary, hire date, grade and step# for all employees at the named County Sheriff's Office; name, rank, position#, annual salary, hire date, grade and step# for all employees at the named County Constables Offices; ETC.

This acknowledges receipt of your correspondence dated January 26, 2016, in which you request an open records decision regarding an open records request from Bruce L. Denney. Your correspondence has been assigned ID# 604263. Please reference this ID# for any further correspondence regarding this matter.

REMINDER: The Public Information Act provides specific deadlines for the submission of certain materials to this office. If you have not already done so, within ***ten business days*** of your receipt of the open records request, you must provide the requestor with 1) a written statement that you wish to withhold the requested information and have asked for an attorney general decision and 2) a copy of your written communication to the attorney general asking for a decision or a redacted copy of that written communication if it discloses the requested information. Gov't Code § 552.301(d). Also, if release of a person's proprietary information is implicated, you must notify that person in writing of the request for an attorney general decision within ***ten business days*** of your receipt of the open records request and include the information mandated by Gov't Code § 552.305(d)(2).

If you have not already done so, you must submit to this office within ***fifteen business days*** of your receipt of the open records request:

- ☒ 1) arguments explaining why stated exceptions apply,
- ☐ 2) a copy of the open records request,
- ☐ 3) a signed statement or sufficient evidence of date the agency received the open records request, or
- ☒ 4) the specific information requested or a representative sample of the information. It is not appropriate to submit a representative sample when section 552.110 is implicated.

Id. § 552.301(e). Lastly, within ***fifteen business days*** of your receipt of the open

records request, you must provide the requestor with a copy of your written comments submitted to this office stating the reasons why the stated exceptions apply that would allow the information to be withheld. *Id.* § 552.301(e-1). If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy. *Id.*



COUNTY ATTORNEY
Fort Bend County, Texas

ROY L. CORDES, JR.
County Attorney

(281) 341-4555
Fax (281) 341-4557

January 26, 2016

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Via CMRR # 7014 2120 0004 3063 4669

RE: Public Information Act Request
From:
To: Fort Bend County Sheriff's Office
Re: Release of records not subject to public disclosure

Dear Attorney General Paxton:

Enclosed please find the following documents:

1. **Exhibit A:** A copy of the request for public information received by the Fort Bend Sheriff's Office on January 11, 2016.

Please be advised that the Fort Bend County Sheriff's Office received the enclosed request for public information on January 11, 2016, from Bruce Denney for various records. *See* Exhibit A. Please also be advised that Fort Bend County Offices were closed Monday January 18, 2016 in observance of the Dr. Martin Luther King, Jr. holiday.

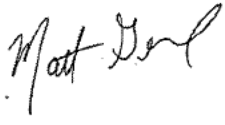
We believe that some of the information requested may be protected from release under the Public Information Act. We hereby give notice that the information may be excepted from release under any and all exceptions to the Act, to include but is not limited to, sections 552.101, 552.103, 552.107, 552.108, 552.111 and 552.130.

This office will identify any responsive records believed to be excepted and will provide that material with our more detailed brief at a later date, not to exceed 15 business days from the date the request was originally received. By copy of this letter, the Requestor is hereby notified of Fort Bend County's intention to withhold these records from disclosure, if such records exist.

Thank you in advance for your assistance with this matter. Please do not hesitate to contact me if you have any questions regarding this matter. I can be reached at (281) 341-4555 or via e-mail: Matthew.Grove@fortbendcountytx.gov.

Very truly yours,

ROY L. CORDES, JR.
FORT BEND COUNTY ATTORNEY

By: 
Matthew L. Grove
Assistant County Attorney

Enclosure

cc: Fort Bend County Sheriff's Office

Mr. Bruce Denney
Via Email:

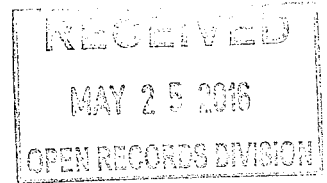
LAW OFFICES OF JIM JEFFREY

2214 Park Springs Blvd.
Arlington, TX 76013

jim.jeffrey@sbcglobal.net
Fax-817-275-5826

James T. Jeffrey, Jr.
Attorney at Law

817-261-4640
817-261-3200



May 23, 2016

OR-620511-16
620511

Hon. Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Decision – Tex. Gov’t Code § 552.301
Public Information Requestor: Rita Johnston
Governmental Entity: City of Westworth Village, Texas

Dear General Paxton:

I represent the City of Westworth Village and its Police Department. On May 9, 2016, the City of Westworth Village received an Open Records Request from Rita Johnston. This request for a ruling is submitted pursuant to Tex. Gov’t Code § 552.301. Because this request is submitted on or before the tenth business day after receipt of the May 9, 2016 Open Records Request, this request for a ruling is timely. The documents which are forwarded to you with this letter are bates-numbered “ORR – WV/Johnston p. 1” et seq. For convenience, pages are referred to simply by the page number without the full bates label reference.

Previous Open Records/Public Information Proceeding

On July 27, 2015 and July 30, 2015, a request for ruling and related documents were submitted to your office in connection with a Public Information Request submitted by attorney J.R. Fletcher. At the time, Attorney Fletcher represented Rita Johnston and other members of the family of the decedent Jason Johnston – the subject of the present May 9, 2016 Open Records Request. Your office previously ruled on September 28, 2015 that virtually all of the previously submitted records could be withheld. See ORR 2015-20279.

Reasonable Anticipation of Litigation

Attorney Fletcher and Ms. Rita Johnston have both indicated Attorney Fletcher is no longer representing Ms. Johnston. However, it is unclear whether Attorney Fletcher represents other members of the family of decedent Jason Johnston. Moreover, at least one telephone voicemail message has been left with Westworth Village Police Department on or about September 19, 2015 indicating that the brother of decedent Johnston had generally worked as the family member who is handling family business related to the death and that the family was hiring an attorney.

The previous Open Record proceedings were initiated by Attorney Fletcher, who had been identified by Rita Johnston as her attorney, who then later advised he was no longer representing Ms. Johnston. Because the earlier Open Records Request had been made by Attorney Fletcher July

6, 2015, and because the voicemail from decedent Johnston's brother was received by WVPD September 19, 2015, at a time when Attorney Fletcher had not yet notified Westworth Village that his representation of Rita Johnston had ended, it appears that Rita Johnston or other members of the family are either represented by another attorney who has yet to come forward, or the family is continuing efforts to retain additional legal counsel. For these reasons, Westworth Village reasonably anticipates that it will be involved in litigation with the Johnston family within the meaning of Government Code § 552.103(c).

Background Information – Arrest & Suicide of Jason Johnston

Jason Johnston was arrested by WVPD Officers. While he was held in WVPD's detention facility, he committed suicide. The criminal charges that had been brought against Jason Johnston before he committed suicide did not proceed to a conviction because he committed suicide before the proceedings could progress to that point.

As you can see from the enclosed request dated May 9, 2016 and received that day, there are six categories or items requested. I will respond to each of the categories with an explanation of the reasons for withholding information.

1. A complete copy of the investigation file, including the findings and conclusions regarding the above-referenced incident.

Page 1 generally consists of an index cover sheet I have prepared to describe the printed material that is located in the compilation that I will refer to as the Investigation File. The Investigation File is pages 5-253. The City requested that the Tarrant County Sheriff's Office handle the primary investigation with a view towards whether or not there is potential criminal responsibility on the part of any person (see pp. 232-252). The City fully cooperated with that investigation. The Tarrant County Medical Examiner also conducted an investigation. The City fully cooperated with the Medical Examiner's investigation.

The autopsy report generated by the Tarrant County Medical Examiner is not being withheld, and that item has been forwarded to Ms. Johnston under separate cover since that report is available to a member of the public who makes their own Open Record Request directly to the Medical Examiner's Officer.

The WVPD waited on the outcome of the Tarrant County Sheriff's Office's investigation (pp. 232-252) before WVPD completed its own investigation. However, WVPD relied extensively on the Sheriff's Office's investigation. The Sheriff's Office investigation was conducted at the request of WVPD to determine if there was potential criminal activity associated with the death of Jason Johnston. WVPD requested that the investigation be handled by the Sheriff's Office in order that there be no appearance of a biased investigation. Ordinarily, such an investigation could be handled by WVPD, but it appeared prudent to WVPD that an outside agency conduct the investigation.

At any rate, the Sheriff's Office Investigation Report and materials (pp. 232-252) are excepted from disclosure because the investigation materials constitute information relating to litigation which the City reasonably anticipates within the meaning of Government Code § 552.103(c). In addition, as can be seen at pages 235-236 and 241-243 of the Sheriff's Office report, the report carefully analyzes the layout of the City's detention facility as explained within the

report and as more fully discussed in Section 2 below concerning the video surveillance footage. Releasing such information would clearly interfere with law enforcement or prosecution within the meaning of Government Code § 552.108(a)(1) and (b)(1). Release of such information detailing the position of cameras, the manner in which the cameras record information, the camera views, and the methods of monitoring the cameras could lead to breaches in security within the detention facility whereby persons detained could either harm themselves or others, or could potentially attempt to escape from the facility. Thus, release of such information would clearly interfere with law enforcement or prosecution within the meaning of Government Code § 552.108(a)(1) and (b)(1). This information is therefore clearly excepted from disclosure.

The WVPD Investigation Report likewise contains a detailed analysis of the video camera positions, monitoring procedures, times of monitoring, and analysis of this information (pp. 219-224). The WVPD Report also contains summary and analysis of the TCSO Report and observations of the same information about the monitoring within the jail (pp. 225-226). Release of such information would clearly interfere with law enforcement or prosecution within the meaning of Government Code § 552.108(a)(1) and (b)(1). It is therefore excepted from disclosure.

2. The video surveillance footage of the above-referenced incident.

I am furnishing a flash-drive (inside the enveloped labeled p. 253) which contains video surveillance footage pertaining to Jason Johnston. As explained above, the City of Westworth Village reasonably anticipates litigation with the Johnston family. Thus, the video surveillance footage is excepted from disclosure because it is information relating to litigation involving the City which is reasonably anticipated at the time the present Open Record Request was received. It is therefore excepted from disclosure pursuant to Government Code § 552.103(c).

Furthermore, even without regard to the subject incident – the death of Jason Johnston – releasing the video would interfere with the City's law enforcement activities including the detection, investigation or prosecution of crime, and would interfere with the Police Department's security measures – which are an internal record or notation of the City's Police Department maintained for internal use and matters relating to law enforcement or prosecution, and such release would clearly interfere with law enforcement or prosecution as I will explain. See § 552.108(a)(1) and (b)(1).

As you can see, the videos show various views of the interior of the jail booking area, as well as the jail facility and areas inside the jail, including jail cells. As you can also see, certain areas of the jail are designed to hold more than one detainee at a time. Certain secure areas including portions of jail cells are not fully visible from the cameras. Thus, releasing the videos – even without regard to the present situation involving the ongoing investigation into Jason Johnston's death – would reveal confidential security plans and configurations within the jail facility. This would certainly interfere with the City's law enforcement activity and potentially subject detainees, personnel in the jail, and Police Officers to danger posed by detainees or other persons who may wish to try to take advantage of knowledge of the jail security measures that could be obtained by viewing the positions of cameras, the views of cameras, and areas where cameras do not fully show portions of the facility. This could potentially lead to breaches in security. Such information is therefore excepted from disclosure pursuant to § 552.108(a)(1) and (b)(1). Because video equipment can also capture offenses committed in the jail, releasing such information would also interfere with law enforcement investigation and potential prosecution.

3. Medical records and autopsy reports concerning the above-referenced incident.

The only medical reports or records consist of the Autopsy Report and Custodial Death Report. Under separate cover, both items are furnished to Rita Johnston. In addition, medical screening information obtained at the time of the booking of decedent Jason Johnston is also furnished to Rita Johnston under separate cover.

4. The police report concerning the arrest with the above-named subject.

The Police Report and related items pertaining to Jason Johnston at pages 21-51 are excepted from disclosure. The underlying activity involved the arrest of Jason Johnston and such arrest did not lead to a prosecution and conviction for Mr. Johnston. The information is excepted from disclosure pursuant to § 552.108(a)(2). Moreover, because the investigation as to Mr. Johnston's alleged criminal activity ended as to Mr. Johnston when he committed suicide, the information is excepted from disclosure pursuant to § 552.108(a)(2).

Your office reached that exact conclusion in a case in which there had been an investigation of criminal activity involving a decedent, but because there had been no conviction before the decedent committed suicide, and the investigation of the criminal activity concluded when the suspect committed suicide, there was no final conviction or final deferred adjudication and therefore the arrest report and incident report was excepted from disclosure pursuant to § 552.108(a)(2). See Tex. Att. Gen. Op. OR 2004-5791 (Tex. A.G. July 14, 2004), 2004 WL 1607369 (2004). For all these reasons, the report is excepted from disclosure.

5. The City of Westworth Village's policy regarding jail suicide risk and prevention.

Materials at pages 198-218 may be responsive in whole or part to Request No. 5. These items generally concern the processing and monitoring of detainees. WVPD procedures regarding jail suicide risk and prevention constitute information relating to litigation reasonably anticipated at the time the Open Records Request was received within the meaning of Government Code § 552.103(c). In addition, releasing such information would interfere with the City's law enforcement performance within the meaning of § 552.108(b)(1). As a law enforcement agency, the City attempts to address risks of jail suicides in accordance with recognized standards. Its procedures or framework for addressing suicide risk and addressing suicide prevention – if released – would be publicly available and would therefore be potentially defeated by detainees who would know such policies or procedures or safeguards, and would try to take advantage of such knowledge, potentially to harm themselves if they were in the custody of Westworth Village. The information is therefore excepted from disclosure both because the information is related to anticipated litigation (§ 552.103(c)) and because releasing the information would interfere with the City's law enforcement activities (§ 552.109(b)(1)).

6. Statistics on jail deaths that have occurred in the Westworth Village jail in the proceeding [sic] ten years.

This is the only custodial death known to have taken place in Westworth Village's jail facilities during the preceding 10 years. There are no statistics other than that. In short, there is nothing to produce, nor is there anything to withhold.

In accordance with Tex. Gov't Code § 552.301(d)(2), I am providing the requestor – Rita Johnston – with a copy of this request for an Attorney General's Opinion. I am not providing Ms. Johnston with the information that is being withheld. However, as you can see from the copy of my letter to Ms. Johnston, which is enclosed, I did provide Ms. Johnston with copies of the information listed in that letter

Respectfully submitted,



JAMES T. JEFFREY, JR.

cc: (copy of letter & enclosures)
Rita Johnston

From: rita johnston
Date: May 9, 2016 at 1:26:21 AM CDT
To: smilligan@cityofwestworth.com
Subject: WEBLINK MAIL

OPEN RECORDS REPORT

Re: Rita Johnston, Individual and on behalf of the
Estate of Jason Johnston
Incident: Jail suicide of Jason Johnston
Date: April 10-11, 2015

To Whom It May Concern:

Please accept this as a formal Open Records Request for;

1. A complete copy of the investigation file, including the findings and conclusions regarding the above-referenced incident;
2. The video surveillance footage of the above-referenced incident;
3. Medical records and autopsy reports concerning the above-referenced incident;
4. The police report concerning the arrest with the above-named subject;
5. The City of Westworth Village's policy regarding jail suicide risk and prevention;
6. Statistics on jail deaths that occurred in the Westworth village jail in the past 10 years.

With regards,

Mrs. Rita Johnston

LAW OFFICES OF JIM JEFFREY

2214 Park Springs Blvd.
Arlington, TX 76013

jim.jeffrey@sbcglobal.net
Fax-817-275-5826

James T. Jeffrey, Jr.
Attorney at Law

817-261-4640
817-261-3200

May 23, 2016

Rita Johnston
Via email:

RE: May 9, 2016 "Open Records Request" to City of Westworth Village

Dear Ms. Johnston

I represent the City of Westworth Village and its Police Department, and I am specifically responding to your May 9, 2016 "Open Records Request." Your May 9, 2016 request was received by the City that day, and the City has ten business days to respond pursuant to §§ 552.221(d) and 552.301. Therefore, this response is timely.

For reasons that are more fully set forth in my letter to the Texas Attorney General (a copy of which is enclosed), the City is withholding items that would be responsive to your Request Nos. 1, 2, 3, 4, and 5. (See Tex. Gov't Code § 552.301.)

There is certain information which is not excepted from disclosure which I am providing to you as follows:

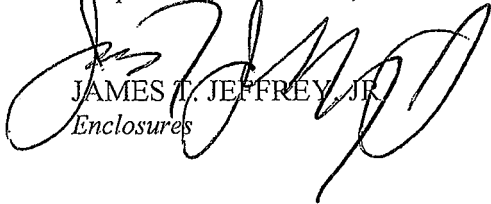
1. Cover sheet information concerning arrest of Jason Johnston (your Request No. 4) (I have redacted information on that cover sheet which is not public.);
2. Autopsy Report from Tarrant County Medical Examiner;
3. Westworth Village Police Department Medical Questionnaire;
4. Westworth Village Police Department Property Receipt;
5. Westworth Village Arrest Narrative;
6. Westworth Village Suicide Prevention Screening Guidelines;
7. Magistrate Adult Warning and Election of Counsel.

Ms. Johnston
May 23, 2016

Page 2

In connection with your Request No. 6 – Statistics – there are no statistics because there are no other jail deaths that have occurred in the preceding 10 years.

Respectfully submitted,


JAMES T. JEFFREY, JR.
Enclosures

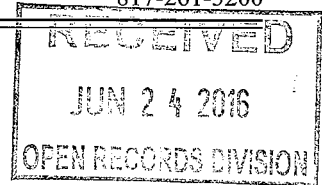
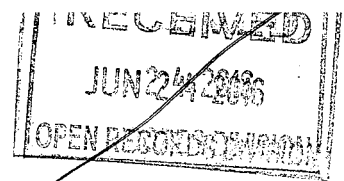
LAW OFFICES OF JIM JEFFREY

2214 Park Springs Blvd.
Arlington, TX 76013

jim.jeffrey@sbcglobal.net
Fax-817-275-5826

James T. Jeffrey, Jr.
Attorney at Law

817-261-4640
817-261-3200



June 21, 2016

Hon. Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

620511

624509

RE: Request for Decision -- Tex. Gov't Code § 552.301
Public Information Requestor: Dana Liebelson -- Huffington Post
Governmental Entity: City of Westworth Village, Texas

Dear General Paxton:

I represent the City of Westworth Village and its Police Department. On June 7, 2016 and again on June 20, 2016, the City of Westworth Village received an Open Records Request from Dana Liebelson of the Huffington Post. This request for a ruling is submitted pursuant to Tex. Gov't Code § 552.301. Because this request is submitted on or before the tenth business day after receipt of the June 7, 2016 and June 20, 2016 Open Records Requests, this request for a ruling is timely.

The documents which are forwarded to you with this letter are bates-numbered "ORR -- WV/Johnston p. 1" et seq. As explained below, the documents and flash-drive bates-numbered ORR -- WV/Johnston p. 1-253 were previously furnished to your office on May 23, 2016, along with a request for ruling in connection with the public information request submitted by Rita Johnston. I am enclosing Ms. Liebelson's June 7, 2016 and June 20, 2016 Open Records Requests bates-numbered "ORR -- WV/Johnston p. 254 & p. 255" respectively. Because paper copies of the pages marked "ORR -- WV/Johnston pp. 1-252 were previously furnished on May 23, 2016 with the Johnston request, in order to save paper, I am providing another copy of such documents on the attached CD. The attached CD also includes copies of the June 7, 2016 and June 20, 2016 Open Record Requests. For brevity, throughout the rest of this request to your office, I will refer to items within the enclosed CD by their page number without the full reference to the bates-label. I am also providing another copy of the flash-drive of recordings that were previously submitted on May 23, 2016 with the Johnston request (ORR -- WV/Johnston p. 253).

Previous Open Records/Public Information Proceedings

On July 27, 2015 and July 30, 2015, a request for ruling and related documents were submitted to your office in connection with a Public Information Request submitted by attorney J.R. Fletcher. At the time, Attorney Fletcher represented Rita Johnston and other members of the family of the decedent Jason Johnston -- the subject of the present May 9, 2016 Open Records Request. Your office previously ruled on September 28, 2015 that virtually all of the previously submitted records could be withheld. See ORR 2015-20279.

On May 23, 2016, I submitted a request for ruling to your office in connection with a Public Information Request submitted by Rita Johnston. That proceeding is still pending.

Reasonable Anticipation of Litigation

Attorney Fletcher and Ms. Rita Johnston have both indicated Attorney Fletcher is no longer representing Ms. Johnston. However, it is unclear whether Attorney Fletcher represents other members of the family of decedent Jason Johnston. Moreover, at least one telephone voicemail message has been left with Westworth Village Police Department on or about September 19, 2015 indicating that the brother of decedent Johnston had generally worked as the family member who is handling family business related to the death and that the family was hiring an attorney.

The previous Open Record proceedings were initiated first by Attorney Fletcher, who had been identified by Rita Johnston as her attorney, who then later advised he was no longer representing Ms. Johnston. Because the earlier Open Records Request had been made by Attorney Fletcher July 6, 2015, and because the voicemail from decedent Johnston's brother was received by WVPD September 19, 2015, at a time when Attorney Fletcher had not yet notified Westworth Village that his representation of Rita Johnston had ended, it appears that Rita Johnston or other members of the family are either represented by another attorney who has yet to come forward, or the family is continuing efforts to retain additional legal counsel. For these reasons, Westworth Village reasonably anticipates that it will be involved in litigation with the Johnston family within the meaning of Government Code § 552.103(c).

Background Information – Arrest & Suicide of Jason Johnston

Jason Johnston was arrested by WVPD Officers. While he was held in WVPD's detention facility, he committed suicide. The criminal charges that had been brought against Jason Johnston before he committed suicide did not proceed to a conviction because he committed suicide before the proceedings could progress to that point.

As you can see from the enclosed request dated June 7, 2016 and received that day, there are six categories or items requested. I will respond to each of the categories describing if information is withheld and any reasons for withholding such information.

1. "I am seeking a copy of the investigation report into Jason Mitchell Johnston's death. I understand that this report may have been completed by the Tarrant County Sheriff's Office at your request." (See June 20, 2016 request p. 255.)

Page 1 of the documents generally consists of an index cover sheet I have prepared to describe the printed material that is located in the compilation that I will refer to as the Investigation File. The Investigation File is pages 5-253. The City requested that the Tarrant County Sheriff's Office handle the primary investigation with a view towards whether or not there is potential criminal responsibility on the part of any person (see pp. 232-252). The City fully cooperated with that investigation. The Tarrant County Medical Examiner also conducted an investigation. The City fully cooperated with the Medical Examiner's investigation.

The autopsy report generated by the Tarrant County Medical Examiner is not being withheld, and that item has been forwarded to Ms. Johnston under separate cover since that report is available to a member of the public who makes their own Open Record Request directly to the Medical

Examiner's Officer.

The WVPD waited on the outcome of the Tarrant County Sheriff's Office's investigation (pp. 232-252) before WVPD completed its own investigation. However, WVPD relied extensively on the Sheriff's Office's investigation. The Sheriff's Office investigation was conducted at the request of WVPD to determine if there was potential criminal activity associated with the death of Jason Johnston. WVPD requested that the investigation be handled by the Sheriff's Office in order that there be no appearance of a biased investigation. Ordinarily, such an investigation could be handled by WVPD, but it appeared prudent to WVPD that an outside agency conduct the investigation.

At any rate, the Sheriff's Office Investigation Report and materials (pp. 232-252) are excepted from disclosure because the investigation materials constitute information relating to litigation which the City reasonably anticipates within the meaning of Government Code § 552.103(c). In addition, as can be seen at pages 235-236 and 241-243 of the Sheriff's Office report, the report carefully analyzes the layout of the City's detention facility as explained within the report and as more fully discussed in Section 2 below concerning the video surveillance footage. Releasing such information would clearly interfere with law enforcement or prosecution within the meaning of Government Code § 552.108(a)(1) and (b)(1). Release of such information detailing the position of cameras, the manner in which the cameras record information, the camera views, and the methods of monitoring the cameras could lead to breaches in security within the detention facility whereby persons detained could either harm themselves or others, or could potentially attempt to escape from the facility. Thus, release of such information would clearly interfere with law enforcement or prosecution within the meaning of Government Code § 552.108(a)(1) and (b)(1). This information is therefore clearly excepted from disclosure.

The WVPD Investigation Report likewise contains a detailed analysis of the video camera positions, monitoring procedures, times of monitoring, and analysis of this information (pp. 219-224). The WVPD Report also contains summary and analysis of the TCSO Report and observations of the same information about the monitoring within the jail (pp. 225-226). Release of such information would clearly interfere with law enforcement or prosecution within the meaning of Government Code § 552.108(a)(1) and (b)(1). It is therefore excepted from disclosure. The Austin Court of Appeals has recognized that allowing release of video recordings from video cameras which are intended to be used for security systems would necessarily reveal the clarity, range, angle, and details about the areas being monitored for security purposes. See Texas Department of Public Safety v. Abbott, 310 S.W.3d 670, 676-677 (Tex. App. – Austin 2010). The Austin Court of Appeals squarely recognized that revealing such information would thwart the purpose of the security monitoring system and potentially allow evasion of the very purpose of the security monitoring cameras. Here, revealing the positions, camera angles, and information which is captured and information which is not captured would thwart the purpose of the security monitoring within the jail and environs of the jail, potentially allowing persons with awareness of such information to cause harm to themselves or others, or to attempt to breach security by entering or exiting the jail without authorization. For this additional reason, Government Code § 552.108(a)(1) and (b)(1) excepts such information from disclosure.

Apparently as part of the item I have identified as Request No. 1 within the June 20, 2016 request (p. 255), Ms. Liebelson also states "I am seeking any documents used to compile this narrative: 'Johnston was booked in according to policy...' with the described narrative ending "...tied off to the top bunk." (p. 255). To the extent responsive documents exist, they would be encompassed within the materials which are portions of the investigation file identified at pages 5-252 and also encompassed within the video described in the next section and contained at p. 253. However, as your

office has previously recognized, in response to an Open Record Request, the City is not required to conduct an interpretation or evaluation of information or format information in a manner which it is not already formatted, or create additional information, or answer general questions. Attorney General Opinion JM-672 (1987); Open Records Decision No. 452 (1986); Open Records Decision No. 145 (1976). For these reasons, there are no specific responsive documents, but the information sought would be encompassed within the materials which are being furnished to your office.

2. "I am seeking jail video showing Jason Mitchell Johnston attempting to use the jail phone cord as a ligature." (June 20, 2016 request, p. 255).

I am furnishing a flash-drive which contains video surveillance footage pertaining to Jason Johnston (p. 253). As explained above, the City of Westworth Village reasonably anticipates litigation with the Johnston family. Thus, the video surveillance footage is excepted from disclosure because it is information relating to litigation involving the City which is reasonably anticipated at the time the present Open Record Request was received. It is therefore excepted from disclosure pursuant to Government Code § 552.103(c).

Furthermore, even without regard to the subject incident – the death of Jason Johnston – releasing the video would interfere with the City's law enforcement activities including the detection, investigation or prosecution of crime, and would interfere with the Police Department's security measures – which are an internal record or notation of the City's Police Department maintained for internal use and matters relating to law enforcement or prosecution, and such release would clearly interfere with law enforcement or prosecution as I will explain. See § 552.108(a)(1) and (b)(1).

As you can see, the videos show various views of the interior of the jail booking area, as well as the jail facility and areas inside the jail, including jail cells. As you can also see, certain areas of the jail are designed to hold more than one detainee at a time. Certain secure areas including portions of jail cells are not fully visible from the cameras. Thus, releasing the videos – even without regard to the present situation involving the ongoing investigation into Jason Johnston's death – would reveal confidential security plans and configurations within the jail facility. This would certainly interfere with the City's law enforcement activity and potentially subject detainees, personnel in the jail, and Police Officers to danger posed by detainees or other persons who may wish to try to take advantage of knowledge of the jail security measures that could be obtained by viewing the positions of cameras, the views of cameras, and areas where cameras do not fully show portions of the facility. This could potentially lead to breaches in security. Such information is therefore excepted from disclosure pursuant to § 552.108(a)(1) and (b)(1). See Texas Department of Public Safety v. Abbott, 310 S.W.3d 670, 676-677 (Tex. App. – Austin 2010). Because video equipment can also capture offenses committed in the jail, releasing such information would also interfere with law enforcement investigation and potential prosecution.

3. The Arrest Report for Jason Mitchell Johnston from 4/10/2015, showing his charges, bail, and the Police narrative. (June 7, 2016 Request, p. 254).

As you can see from the enclosed letter to Dana Liebelson, I have already furnished Ms. Liebelson with the information which is deemed public and which is responsive to this Request. However, we are withholding certain items that would be the "Police Report."

The Police Report and related items pertaining to Jason Johnston at pages 21-51 are excepted from disclosure. The underlying activity involved the arrest of Jason Johnston and such arrest did not

lead to a prosecution and conviction for Mr. Johnston. The information is excepted from disclosure pursuant to § 552.108(a)(2). Moreover, because the investigation as to Mr. Johnston's alleged criminal activity ended as to Mr. Johnston when he committed suicide, the information is excepted from disclosure pursuant to § 552.108(a)(2).

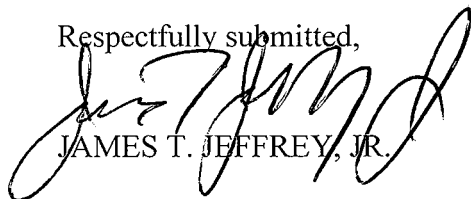
Your office reached that exact conclusion in a case in which there had been an investigation of criminal activity involving a decedent, but because there had been no conviction before the decedent committed suicide, and the investigation of the criminal activity concluded when the suspect committed suicide, there was no final conviction or final deferred adjudication and therefore the arrest report and incident report was excepted from disclosure pursuant to § 552.108(a)(2). See Tex. Att. Gen. Op. OR 2004-5791 (Tex. A.G. July 14, 2004), 2004 WL 1607369 (2004). For all these reasons, the report is excepted from disclosure.

4. Documents showing the police department's protocol for mental health screening and suicide prevention of new inmates. (June 7, 2016 Request, p. 254).

Materials at pages 198-218 may be responsive in whole or part to this Request. These items generally concern the processing and monitoring of detainees. WVPD procedures regarding jail suicide risk and prevention constitute information relating to litigation reasonably anticipated at the time the Open Records Request was received within the meaning of Government Code § 552.103(c). In addition, releasing such information would interfere with the City's law enforcement performance within the meaning of § 552.108(b)(1). As a law enforcement agency, the City attempts to address risks of jail suicides in accordance with recognized standards. Its procedures or framework for addressing suicide risk and addressing suicide prevention – if released – would be publicly available and would therefore be potentially defeated by detainees who would know such policies or procedures or safeguards, and would try to take advantage of such knowledge, potentially to harm themselves if they were in the custody of Westworth Village. The information is therefore excepted from disclosure both because the information is related to anticipated litigation (§ 552.103(c)) and because releasing the information would interfere with the City's law enforcement activities (§ 552.109(b)(1)).

In accordance with Tex. Gov't Code § 552.301(d)(2), I am providing the requestor – Dana Liebelson – with a copy of this request for an Attorney General's Opinion. I am not providing Ms. Liebelson with the information that is being withheld. However, as you can see from the copy of my letter to Ms. Liebelson, which is enclosed, I did provide Ms. Liebelson with copies of certain information listed in that letter

Respectfully submitted,



JAMES T. JEFFREY, JR.

cc: (copy of letter)

Dana Liebelson, Reporter

HUFFINGTON POST

1750 Pennsylvania Avenue NW, Ste. 600

Washington, D.C. 20006

On Tue, Jun 7, 2016 at 11:05 AM, Dana Liebelson

wrote:

Good morning, under the state's public records law, I am requesting copies of the following materials:

1. The arrest report for Jason Mitchell Johnston from 4/10/2015, showing his charges, bail, and the police narrative.
2. Documents showing whether Jason Mitchell Johnston was on suicide watch, and the last time he was checked on by police department staff.
3. Documents showing the police department's protocol for mental health screening and suicide prevention of new inmates.
4. The death certificate for Jason Mitchell Johnston (if this is available elsewhere, please let me know the correct contact.)

This information is being sought on behalf of the Huffington Post for dissemination to the general public. By making this request, I am gathering information for a national investigation on jail deaths.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to the public's understanding of how jail deaths occur. If a fee waiver is not possible, I would appreciate if you would notify me of the cost prior to releasing the records

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would greatly appreciate my requested documents being e-mailed to me via PDF as to cut down on time and copy costs. Please send documents as they are available (for example, feel free to send documents for the first request if they are available before the second.)

As I am making this request as a journalist and this information is of a timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

My phone number is 202-624-9397. I look forward to your reply.

Best,

Dana Liebelson
Reporter

Huffington Post

1750 Pennsylvania Avenue NW Suite 600

Washington, D.C. 20006

From: Dana Liebelson
Sent: Monday, June 20, 2016 10:44 AM
To: Samantha Milligan <smilligan@cityofwestworth.com>
Subject: Huffington Post public records request 2

(I sent this email to a couple of people who should not have been on the chain, but I do want to file this request with you—just making sure you received.)

Good morning, I would like to expand upon my initial request. You may consider this a new public records request under state law, although I think my original request (particularly regarding item #2) covered information that would be contained in the investigative report, so you may send that for my first request.

1. I am seeking a copy of the investigative report into Jason Mitchell Johnston's death. I understand that this report may have been completed by the Tarrant County Sheriff's Office at your request.

I am seeking any documents used to compile this narrative:

" Johnston was booked in according to policy, including successful completion of a suicide prevention screening with no indications of a suicide risk. After booking, Johnston was placed in a group cell; however, he was the only person in the cell. After booking, Johnston was placed in a group cell; however, he was the only person in the cell. Johnston was arraigned on his charge on April 11, 2015 at approximately 1200 hours. Many routine jail checks were performed on Johnston throughout his time in the Westworth Village Jail. During a jail check at approximately 1729 hours on April 11, 2015, Johnston was located sitting on the floor of the cell with his back against a bunk. An officer entered the cell and discovered Johnston with the athletic shorts that he had been wearing under his jail issued uniform in lieu of underwear, tightened around his neck and tied off to the top bunk."

2. I am seeking jail video showing Jason Mitchell Johnston attempting to use the jail phone cord as a ligature.

3. I have already obtained the autopsy report for this case, so I do not need to file for that. That report indicates that Johnston had a medical history that reported obsessive compulsive disorder, ADD, and depression. That report also indicates that Johnston tested positive for opiates, hydrocodone, hydromorphone and morphine.

I am requesting documents showing whether jail staff were aware of Johnston's history of depression and his use of the above drugs, and how that information was used to make a decision not to place him in on suicide watch.

This information is being sought on behalf of the Huffington Post for dissemination to the general public. By making this request, I am gathering information for a national investigation on jail deaths.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to the public's understanding of how jail deaths occur. If a fee waiver is not possible, I would appreciate if you would notify me of the cost prior to releasing the records.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions. I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would greatly appreciate my requested documents being e-mailed to me via PDF as to cut down on time and copy costs. Please send documents as they are available (for example, feel free to send documents for the first request if they are available before the second.)

As I am making this request as a journalist and this information is of a timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

My phone number is 202-624-9397. I look forward to your reply.

Best,

Dana Liebelson
Reporter

Huffington Post

1750 Pennsylvania Avenue NW Suite 600

Washington, D.C. 20006

t. MARY ALDOUS
First Assistant

* TRAVIS TOWNSEND
Chief - Criminal Division

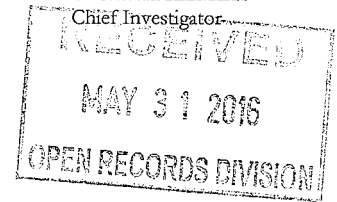


JERI YENNE
CRIMINAL DISTRICT ATTORNEY
BRAZORIA COUNTY

May 27, 2016

RAETHELLA JONES
Chief - Civil Division

VICKI KRAEMER
Chief Investigator



UP-621183-16
621183

Via Certified Mail, Return Receipt Requested

The Honorable Ken Paxton
Attorney General of Texas
Attn: Open Records Division
PO Box 12548
Austin, TX 78711-2548

RE: Request for Open Records Decision Regarding Public Information Act Request for Brazoria County Sheriff's Office Records

Dear Mr. Paxton:

This request for an open records decision concerns the enclosed request from Ms. Savannah Robinson to the Brazoria County Sheriff's Office (the "Sheriff's Office"). (See Open Records Request, attached hereto as Exhibit 1). The Sheriff's Office received the request by facsimile on May 16, 2016.

Ms. Robinson requests "all copies of all records in regards to Victoria Gray." (Ex. 1). The Sheriff's Office objects to the release of the information responsive to this request for the reasons set forth below and respectfully requests authorization to withhold the information. The information excepted from disclosure is attached hereto as Exhibits 2-5.

I. TEXAS GOVERNMENT CODE § 552.103: EXHIBITS 2-5.

The information responsive to the request (Exhibits 2-5) is excepted from disclosure because it directly relates to a federal lawsuit against Brazoria County filed by the requestor on behalf of John Gray. Texas Government Code section 552.103 states the following, in part:

- (a) Information is excepted from [the Act] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party.

....

COUNTY COURTHOUSE, 111 E. LOCUST, SUITE 408A, ANGLETON, TEXAS 77515

Angleton Area
(979) 864-1233

Houston Area
(281) 756-1233

Brazosport Area
(979) 864-1525

Fax-Criminal Division
(979) 864-1525

Fax-Civil Division
(979) 864-1712

- (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body that is a party to pending litigation has discretion to determine whether it should claim Section 552.103. *See id.*; Tex. Att’y Gen. ORD-511 (1988). The governmental body has the burden of providing relevant facts and documents to show that section 552.103 applies in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.); Tex. Att’y Gen. ORD-551 (1990).

The information in Exhibits 2-5 is related to pending litigation of a civil nature to which Brazoria County is a party. On April 26, 2016, on behalf of John Gray, the requestor filed a lawsuit in the Southern District of Texas against Brazoria County. A copy of Plaintiff’s Complaint in this action is attached hereto as Exhibit 6. The complaint alleges Brazoria County and “unknown employees” are liable under 42 U.S.C. § 1983 for damages related to the death of Victoria Gray in the Brazoria County Detention Center on September 2, 2014. (Ex. 6). The information responsive to the request pertains to Ms. Gray’s detention and treatment, and therefore, is related to Mr. Gray’s claims.

Section 552.103 requires parties to obtain information relating to litigation through the discovery process. Tex. Att’y Gen. ORD-551 (1990). Section 552.103 “enable[s] governmental bodies to protect their position in litigation by requiring parties to seek relevant information to obtain it, *if at all*, through ‘discovery’ processes.” *Cornyn v. City of Corinth*, 994 S.W.2d 258, 265 (Tex. App.—Austin 1999, no pet.) (emphasis added). The requestor filed suit against Brazoria County less than three weeks before submitting her request to the Sheriff’s Office. Brazoria County has not even made an appearance in the suit. The production of the information in Exhibits 2-5 to the requestor is governed by the Federal Rules of Civil Procedure, and the District Court Judge is the final decision maker over what records, if any, may be produced under those rules. This request under the Public Information Act clearly seeks to avoid the discovery limitations of the Federal Rules of Civil Procedure and allows the requestor to engage in an unchecked discovery expedition that would not be permitted by the Court. Accordingly, the information in Exhibits 2-5 is excepted from disclosure under Section 552.103.¹

¹ To the extent Exhibits 2-5 contain any completed reports, audits, evaluations, or investigations by a governmental body, Section 552.103 is applicable to those records because they are subject to Section 552.108. *See* ¶ II of this Letter; TEX. GOV’T CODE § 552.022(a)(1).

II. TEXAS GOVERNMENT CODE § 552.108: EXHIBITS 2-5.

The information in Exhibits 2-5 is excepted from disclosure because it deals with the detection and investigation of crime in relation to an investigation that did not result in conviction or deferred adjudication. TEX. GOV'T CODE §§ 552.108(a)(2), (b)(2). Texas Government Code section 552.108(a) provides the following, in part:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

....

- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

Further, Texas Government Code section 552.108(b) provides the following, in part:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

....

- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication;

The information responsive to the request is held by a law enforcement agency (the Sheriff's Office) and was part of a closed death investigation conducted by the Sheriff's Office in response to a death in the Brazoria County Detention Center. The investigation was presented to a grand jury and did not result in a conviction or deferred adjudication. Subsections 552.108(a)(2) and (b)(2) apply to Exhibits 2-5. *See* Tex. Att'y Gen. Op. OR2014-01136 (2014) (applying law enforcement exception to information related to closed death investigation conducted by sheriff's office).

III. TEXAS GOVERNMENT CODE § 552.101 / TEXAS OCCUPATIONS CODE CH. 159: EXHIBITS 2-3.

The information in Exhibits 2-3 is confidential and excepted from disclosure pursuant to Section 552.101 and Texas Occupations Code chapter 159. The release of a patient's medical records or related information is governed by the Medical Practice Act (the "MPA"), Title 3, Subtitle B of the Occupations Code. Section 159.002 of the MPA provides, in part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

TEX. OCC. CODE § 159.002. Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004; Tex. Att'y Gen. ORD-598 (1991). The protection afforded by Section 159.002 extends to records created by either a physician or someone under a physician's supervision. *See Open Records Decision Nos. 8830 (2011), 487 (1987), 370 (1983), 343 (1982).*

Exhibits 2-3 contain medical records completed by health care providers at the Brazoria County Detention Center. The individuals who made the records are either physicians or persons under the supervision of a physician. The records in Exhibits 2-3 are confidential under Occupations Code chapter 159 and must be withheld.²

IV. TEXAS GOVERNMENT CODE § 552.101 / TEXAS HEALTH & SAFETY CODE CH. 611: EXHIBIT 3.

The information in Exhibit 3 is also confidential under Texas Health and Safety Code chapter 611 and is, therefore, excepted from disclosure pursuant to Section 552.101. Chapter 611 pertains to information related to a person who consults with or is interviewed by a medical or mental health professional for "diagnosis, evaluation, or treatment of any mental health or

² The patient to which Exhibits 2-3 applies is deceased. The requestor provided the Sheriff's Office a form stating that her client, John Gray, consents to the release of medical records, but the form does not specify Mr. Gray's authority to consent on behalf of the patient.

emotional condition or disorder. . . .” TEX. HEALTH & SAFETY CODE § 611.001(1). Health and Safety Code subsection 611.002(a) provides the following:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Exhibit 3 contains patient³/professional⁴ communications and records of the identity, diagnoses, evaluations, and treatment of a patient by professionals. These records are confidential by law and must be withheld pursuant to Section 552.101.⁵

V. TEXAS GOVERNMENT CODE § 552.101 / TEXAS GOVERNMENT CODE CH. 411: EXHIBIT 4.

The information in Exhibit 4 is confidential under Texas Government Code chapter 411 and is, therefore, excepted from disclosure pursuant to Section 552.101. Exhibit 4 contains “criminal history record information” under Government Code Chapter 411, Subchapter F. ***Please note that the information in Exhibit 4 has not been provided with this letter because Government Code section 411.084 prohibits the disclosure of such information. See also TEX. GOV’T CODE § 411.085 (stating that the unauthorized disclosure of criminal history record information is a***

³ Under Chapter 611, “patient” means “a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.” TEX. HEALTH & SAFETY CODE § 611.001(1).

⁴ Under Chapter 611, “professional” means the following:

- (A) a person authorized to practice medicine in any state or nation;
- (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
- (C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Id. § 661.001(2).

⁵ The patient to which Exhibit 3 applies is deceased. The requestor provided the Sheriff’s Office a form stating that her client, John Gray, consents to the release of medical records, but the form does not specify Mr. Gray’s authority to consent on behalf of the patient.

The Honorable Ken Paxton

May 27, 2016

Page 6

criminal offense).⁶ Chapter 411 does not permit the release of the records in Exhibit 4 to the requestor, and accordingly, the Sheriff's Office requests to withhold this information.⁷

For the reasons discussed above, the Sheriff's Office respectfully requests a ruling authorizing it to withhold the information in Exhibits 2-5. If you have any questions, please contact me at (979) 864-1233.

Best regards,



Andrew Heston
Assistant District Attorney
Brazoria County, Texas

Enclosures

- Exhibit 1: Request by Savannah Robinson (May 16, 2016)
Exhibits 2-5: Information Responsive to Request (see enclosed disc)
Exhibit 6: Plaintiff's Complaint in Civil Action No. 3:16-cv-109; *Gray v. Brazoria County, et al.*; In the United States District Court for the Southern District of Texas – Galveston Division

CC: **Via Certified Mail, Return Receipt Requested**

Ms. Savannah Robinson
Law Office of Savannah Robinson
1822 Main
Danbury, Texas 77534
(Section V Redacted)
Exhibits 1 and 6

⁶ Because the Sheriff's Office is prohibited from disclosing whether or not such criminal history records exist, this section has been redacted in the copy of this letter sent to the requestor. See TEX. GOV'T CODE § 411.084(c); *id.* § 552.301(e-1).

⁷ Exhibit 4 also includes information related to offenses committed by an individual as a juvenile. This information is confidential under Texas Family Code chapter 58.

COUNTY COURTHOUSE, 111 E. LOCUST, SUITE 408A, ANGLETON, TEXAS 77515

Angleton Area
(979) 864-1233

Houston Area
(281) 756-1233

Brazosport Area
(979) 864-1525

Fax-Criminal Division
(979) 864-1525

Fax-Civil Division
(979) 864-1712

EXHIBIT 1

LAW OFFICE OF SAVANNAH ROBINSON

1822 Main
Danbury, Texas 77534
979-922-8825
Fax: 979-922-8857

www.savannahrobinson.com
email: savannahrobinson@aol.com

16 May, 2015

Brazoria County Sheriff's Office
Attn: Records Department
3602 CR 45

Angleton, TX 77515

Attn: *Amanda* F: *979.864.2210*

Re: Victoria Gray v. Brazoria County
Cause No. 16-109, in the Federal District Court of Galveston, TX

To Whom It May Concern;

I represent John Gray III, father of Victoria Gray (Deceased). A copy of her HIPPA release is attached, including an affidavit of records. We also included a release from John Gray III.

Would you provide me all copies of all records in regards to Victoria Gray?

Your reasonable fees will be cheerfully paid.

Looking forward to working with you.

Sincerely,



Savannah Robinson

Encl.

EXHIBIT 6

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

**JOHN GRAY, individually and as the
representative of the Estate of Victoria
Gray(deceased),**

Plaintiff,

v.

**BRAZORIA COUNTY, and unknown
Employees of the Brazoria County
Detention Center**

Defendants.

CIVIL ACTION NO. _____

(JURY DEMANDED)

PLAINTIFF'S COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW John Gray, Plaintiff, individually and in his capacity as the representative of Victoria Gray (deceased), and files this his Complaint for causes of action against Defendants Brazoria County and unknown employees (herein after referred to as "Jail Staff" and would show this Court and jury as follows:

I. NATURE OF THE CASE

1. This case is brought to redress the deprivation, under color of state law, ordinance, regulation, and custom or usage, of rights, privileges and immunities secured to Plaintiff under the Fourth, and Fourteenth Amendments of the United States Constitution via 42 U.S.C. Section 1983.

2. Further, this is brought under the Texas Wrongful Death Statute, Tex. Civ. Prac. & Rem. Code 71.003, et seq, and Texas Survival Statute, Tex. Civ. Prac. & Rem. Code 71.021 et seq.

II. PARTIES

3. The Plaintiff, John Gray is a citizen of the State of Texas and a resident of Brazoria County.

4. Defendant Brazoria County is a governmental entity. Defendant may be served with process by serving Brazoria County's constitutional Judge, L.M. "Matt" Sebesta, Jr., at his usual place of business, .111 East Locust Street, Suite 102A, Angleton, TX 77515. However, issuance of citation is not requested as it is believed that the County will answer without citation.

5. Defendants "Unknown Employees" are the jail staff on duty in the time period August 29, 2014 to September 02, 2014, who were charged with the care of Victoria Gray. As discovery progresses, these persons will be added and additional citation requested.

III. JURISDICTION & VENUE

6. This case is brought under the Fourth, and Fourteenth Amendments of the United States Constitution via 42 U.S.C. Section 1983. The Court has jurisdiction of the federal causes of action under 28 U.S.C. Sections 1331 and 1343.

7. The Court has jurisdiction over Defendants under 28 U.S.C. Section 1367(a).

8. Venue is proper in the Southern District of Texas—Galveston Division under 28 U.S.C. Section 1391(b)(2). The unlawful practices occurred in the Southern District of Texas—Galveston Division; the records relevant to such practice are maintained and administered in the Southern District of Texas—Galveston Division; and

the Plaintiff and Defendants are located in the Southern District of Texas—Galveston Division.

IV. EXHAUSTION OF ADMINISTRATIVE PROCEDURES

9. All other conditions precedent have been performed or have occurred.

V. JURY DEMAND

10. Plaintiff demands a jury trial on all issues so triable.

VI. STATEMENT OF THE CASE

11. Victoria Gray is the natural daughter of John Gray. At age seventeen she began having emotional and mental issues that conflicted with the law. She was arrested on or about March 11, 2013 and incarcerated until April 04, 2013 for assault. She was again arrested on or about January 31, 2014 for another assault. While in jail in 2014, she attempted suicide. She was discovered hanging from her jail cell in the Brazoria County Detention Center. The staff was able to save her life, and she was subsequently committed to the Austin State Hospital for treatment.

12. Following her release in April of 2014, she was required, as a condition of her probation, to take anti-depressant medications and given a curfew. She was required to present for blood tests to confirm that she was taking her medications.

13. When she violated both conditions of her probation, she was re-arrested on August 29, 2014. Upon intake, she was determined to be a suicide risk. However, the Magistrate was not notified as required by Texas Code of Criminal Procedure Section 16.22. Because she was disruptive, she was placed in isolation.

14. She was found hanging in her cell on September 02, 2014. The Death in Custody report was generated at 2125 hours (9:25 pm). However, the records show she was found at 2230 hours (10:30 pm). The last face to face contact alleged was at 2202

hours (10:02 pm). Despite the discrepancy in the records, she had been left alone for at least twenty minutes.

15. The length of time between face checks was not an isolated mistake. During her stay at Brazoria County jail, the time between checks was as much as 48 minutes, and frequently over the 30 minutes called for by Brazoria County's own standards.

16. While she was in jail, she was heard by other jail inmates begging for medication, and crying out for assistance.

17. Having been placed in isolation, she was not within 24 hour's "eye's on" contact with jail staff, that is, she was not continuously monitored although she was a known suicide risk. The jail staff also gave her the tool she needed to hang herself, a mattress cover.

VII. CAUSES OF ACTION

A. Plaintiff=s 42 U.S.C. ' 1983 Causes of Action Against All Defendants

18. Plaintiff alleges that he, and Victoria Gray, were deprived of substantive and procedural due process rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The actions and omissions of Brazoria County complained of include:

- a) Failing to provide needed and reasonable medical care to Victoria Gray;
- b) Failing to provide for continuous monitoring of Victoria Gray, a known suicide risk;
- c) Failing to adequately train jail staff that a known suicide risk should not be placed in isolation, where continuous monitoring is difficult, inconvenient or

impossible;

- d) Failing to adequately train jail staff that pre-trial detainees like Victoria Gray should be provided with needed medication, especially in the case where the medication was court-ordered;
- e) Being deliberately indifferent in failing to create and implement policies, standards and procedures for the protection of persons who are known suicide risks.

19. The actions and omissions of Jail Staff complained of include:

- a) Failing to use skill and good judgment in refusing to provide Victoria Gray with needed medication that had been court-ordered;
- b) Failing to use skill and good judgment in placing Victoria Gray in isolated confinement where continuous monitoring was inconvenient, difficult or impossible;
- c) Failing to remove all possible tools for suicide from Victoria Gray's jail cell;
- d) Spoiling or altering records.

20. Brazoria County Detention Center and its Jail Staff have a duty to provide adequate medical care to pre-trial detainees like Victoria Gray. In the actions and omissions complained of above, Brazoria County Detention Center breached its duty of care, and hence was negligent. The negligence of Brazoria County Detention Center violated the U.S. Constitution by causing cruel and unusual punishment, and failing to provide for due process.

21. The aforementioned deprivations were done under color of state law, ordinance, regulation, and custom or usage.

22. Defendant Jail Staff are liable in their individual capacities because their actions were committed while acting under color of state law.

23. Defendant Brazoria County is liable for these constitutional violations because it condoned, sanctioned, permitted and/or participated in the unconstitutional actions detailed above.

VIII. PRAYER

24. As a proximate cause of the foregoing, Victoria Gray has suffered damages and seeks the following relief from the Defendants:

- a. A declaration that the acts and practices complained of in this Complaint are in violation of the United States Constitution via ' 1983;
- b. An injunction permanently restraining these violations of the United States Constitution via ' 1983;
- c. Compensatory damages including, but not limited to:
 - i. Past and future physical pain and suffering;
 - ii. Past and future mental pain and anguish;
 - iii. Lost wage earning capacity.

25. As a proximate cause of the foregoing, John Gray has suffered damages and seeks the following relief from the Defendants:

- a. A declaration that the acts and practices complained of in this Complaint are in violation of the United States Constitution via ' 1983;
- b. An injunction permanently restraining these violations of the United States Constitution via ' 1983;
- c. Compensatory damages including, but not limited to:
 - i. Past and future physical pain and suffering;
 - ii. Past and future mental pain and anguish;

ii. Loss of consortium.

26. Plaintiffs further seek an awarding of such other relief, legal or equitable, as may be warranted;

a. Plaintiff further seeks pre- and post-judgment interest, costs of court, attorney=s fees and litigation expenses for trial and appeal;

WHEREFORE, Plaintiff requests that upon trial of this cause, that Plaintiff have judgment as authorized by law, and Plaintiff further requests general relief.

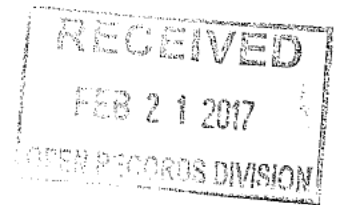
Respectfully submitted,

_____/s/ Savannah Robinson_____
Savannah Robinson
ATTORNEY IN CHARGE
FOR Plaintiff
SBN: 17108150
Fed. ID: 5922
1822 Main
Danbury, TX 77534
(979) 922-8825
savannahrobinson@aol.com

Attorney in Charge for Plaintiff



The Office of Vince Ryan
County Attorney



02-655468-17
655468

February 17, 2017

Honorable Ken Paxton
Attorney General of Texas
Open Records Division
P. O. Box 12548
Austin, Texas 78711

via Certified Mail/ Return Receipt Requested

Attention: Open Records Committee

Re: Public Information Request by Eric Dexheimer to the Harris County Sheriff's Office for documents associated with the agency's investigation into the custodial death of Wayne Fletcher Pratt on May 13, 2010. *C. A. File No. 17PIA0088*

Dear Attorney General Paxton:

On February 3, 2017, Harris County Sheriff's Office received a written request for the above-referenced information in accordance with the Texas Public Information Act (the Act), Tex. Gov't Code § 552.001, *et seq.* We believe the requested information is not subject to disclosure under sections 552.108 and 552.103 of the Act, and any other applicable statutes or cases identified under the Act or other Texas law. A memorandum brief and the information for which exceptions to disclosure are sought are enclosed. Please provide us with your opinion regarding this matter.

The requestor is being copied with this letter and is being notified that if he should have any questions regarding the Act, he may contact the Office of the Attorney General's Hotline at (877) 673-6839.

Yours very truly,

VINCE RYAN
County Attorney

By Kristen Lee
Kristen Lee
Assistant County Attorney

cc: Eric Dexheimer

MEMORANDUM BRIEF

On February 3, 2017, the Harris County Sheriff's Office received a request from Eric Dexheimer for documents associated with the agency's investigation into the custodial death of Wayne Fletcher Pratt on May 13, 2010, enclosed as Exhibit A. The Sheriff's Office is submitting this memorandum brief and the responsive information for which an exception to disclosure is sought, pursuant to the Texas Public Information Act (the Act), Tex. Gov't Code § 552.001, *et seq.* The responsive information for which an exception is sought is attached as Exhibit B.

The Act defines public information as information that is collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business: (1) by a governmental body; (2) for a governmental body under certain circumstances; or (3) by an official or employee in an official capacity. Tex. Gov't Code § 552.002. Public information must be disclosed unless the information falls within one of the Act's specific exceptions to disclosure. Tex. Gov't Code § 552.001; Tex. Att'y Gen. Op. Nos. JM-511 (1988), JM-363 (1983).

The information requested includes documents that fall under sections 552.108 and 552.103, and any other applicable statute and cases identified of the Act, and should be excepted from disclosure.

Discussion

The information requested includes information that falls under section 552.108, the "law enforcement exception." That exception provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Tex. Gov't Code § 552.108(a)(2).

The submitted information relates to a case that was presented to a Harris County Grand Jury on September 7, 2010. The Grand Jury returned a No Bill. No charges or criminal case resulted from this investigation. *See* Exhibit C. On behalf of the Sheriff's Office, our office asserts that the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable, and the submitted information should be withheld.

Furthermore, the requested information falls under section 552.103 of the Act. Section 552.103 provides in part:

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a

political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party. [...]

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code § 552.103(a),(c).

Section 552.103 is intended to prevent the use of the Act as a method of avoiding the rules of discovery used in litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); Tex. Att'y Gen. Op. No. JM-1048 at 4 (1989). This exception allows Harris County to protect its position in litigation as an anticipated party “by forcing parties seeking information relating to that litigation to obtain it through discovery” procedures. Open Records Decision No. 551 at 3 (1990).

The test for demonstrating “... if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information” requires a showing that, as of the date that the request for information was received by the governmental body: (1) litigation involving the governmental body is pending or reasonably anticipated, and (2) the information relates to the litigation. *Univ. of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

Harris County is currently a party to a suit involving the subject of the requested custodial death investigation. The suit is currently pending in the United States Supreme Court, *Ebony Pratt, Individually and as Representative of the Estate of Wayne Pratt v. Harris County, Texas, et al.*, Case 16-893. See Exhibit D. The requested information relates to the complaint brought pursuant to 42 U.S.C. section 1983 stemming from the custodial death of Wayne Pratt. The issue is on appeal from the United States Court of Appeals for the Fifth District. The request was received February 3. Therefore, litigation was pending at the time the county received the request. Therefore, section 552.103 is applicable, and the submitted information should be withheld.

For the above stated reasons and authority, as well as other applicable law, the records/information in Exhibit “B” should be excepted from disclosure in their entirety or at least in part.

From: Dexheimer, Eric (CMG-Austin)
Sent: Friday, February 03, 2017 10:48 AM
To: Lewis, Tebben (HCSO)
Subject: TPIA 02/03/2017 Austin newspaper PIR

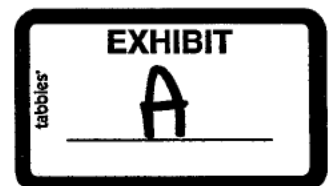
HCSO:

Please accept this letter as an official request under Texas open records laws for the following public documents:

- Any written documents associated with the agency's investigation into the custodial death of **Wayne Fletcher Pratt** on May 13, 2010.

Please don't hesitate to contact me with any questions/clarifications.

Eric Dexheimer
Austin American-Statesman
(512)445-1774



JIM LEITNER
FIRST ASSISTANT



CRIMINAL JUSTICE CENTER
1201 FRANKLIN, SUITE 600
HOUSTON, TEXAS 77002-1901

PATRICIA R. LYKOS
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS

September 9, 2010

Lieutenant Rolf Nelson
Harris County Sheriff's Department
Homicide Division
601 Lockwood
Houston, Texas 77011

RE: HC #10-65797
Dep. B. Goldstein
Dep. M. Medina
Dep. V. Lopez
(ICD-10-06)

Dear Lieutenant Nelson:

The above referenced police involved incident has been presented to the 208th Judicial District Court Grand Jury. The case was presented on September 07, 2010 and the Grand Jury has returned a No Bill.

Although a No Bill has been returned in this matter, should additional admissible evidence develop, which might place the incident in a different light, subject to approval of the District Attorney, it can be represented to another Grand Jury. If you have any questions regarding this decision, call me at 713-755-7077.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Greenwood".

Clint Greenwood
Assistant District Attorney
Police Integrity Division

CG/ma

EXHIBIT

C

tabbles

1277123

SPN 2516492 D.A. Lot # 1672640
No. D/12521

THE STATE OF TEXAS

B. GOLDSTEIN

SEPT. 7

, A. D. 20 10

IN DISTRICT COURT
HARRIS COUNTY

Judge Collins 208th

To Hon. _____ Judge of said court:

The Grand Jury having investigated the case against B. GOLDSTEIN

wherein he is charged with the offense of

NEGLIGENT HOMICIDE INVESTIGATION

and have failed to find a bill of indictment against him, and now ask your honor to have him discharged from custody.

Ronnie R. Culhena 208th
Foreman of the Grand Jury.

To the Sheriff of Harris County:

You are hereby commanded to discharge the said

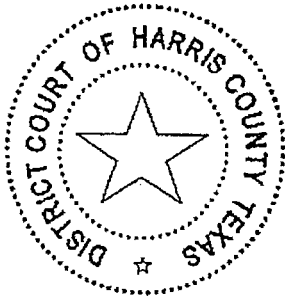
B. GOLDSTEIN.

[Signature]
Judge.

FILED
Loren Jackson
District Clerk

SEP 07 2010

Time: 1:50 PM
By [Signature]
Harris County, Texas
Deputy



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this September 23, 2010

Certified Document Number: 46277990 Total Pages: 1

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

1277125

2516491

D.A. Log # 1672642

No. DIRECT

THE STATE OF TEXAS

vs.

M. MEDINA

SEPT. 7

, A. D. 2010

IN DISTRICT COURT
HARRIS COUNTY

Judge Collins 208th

To Hon.

Judge of said court:

The Grand Jury having investigated the case against

M. MEDINA

wherein he is charged with the offense of

NEGLIGENT HOMICIDE INVESTIGATION

and have failed to find a bill of indictment against him, and now ask your honor to have him discharged from custody.

Rennie P. Culbreth 208th
Foreman of the Grand Jury.

To the Sheriff of Harris County:

You are hereby commanded to discharge the said

M. MEDINA

Jan Krocker
Judge.

FILED

Loren Jackson
District Clerk

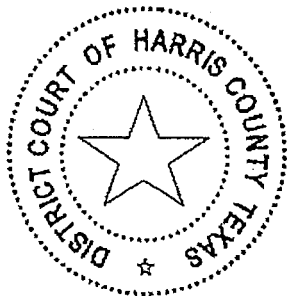
SEP 07 2010

Time: 9:15:00

Harris County, Texas

By G

Deputy



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this September 23, 2010

Certified Document Number: 46277991 Total Pages: 1

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

2516494

1277126

D.A. # 1672637

No DIRECT

THE STATE OF TEXAS

vs.

V. LOPEZ

SEPT. 7

, A. D. 2010

IN DISTRICT COURT
HARRIS COUNTY

To Hon. Judge Collins 2081:

Judge of said court:

The Grand Jury having investigated the case against

V. LOPEZ

wherein he is charged with the offense of

NEGLIGENT HOMICIDE INVESTIGATION

and have failed to find a bill of indictment against him, and now ask your honor to have him discharged from custody.

To the Sheriff of Harris County:

You are hereby commanded to discharge the said

V. LOPEZ.

Don Krocke

Judge.

Ronnie R. Culver 208th

Foreman of the Grand Jury.

FILED

Loren Jackson
District Clerk

SEP 07 2010

Time: 11:00

Harris County, Texas

By [Signature]

Deputy



SUPREME COURT OF THE UNITED STATES

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No. 16-893

Title: Erony Pratt, Individually and as Representative of the Estate of Wayne Pratt, Deceased, Petitioner
v.
Harris County, Texas, et al.
Docketed: January 17, 2017
Lower Ct: United States Court of Appeals for the Fifth Circuit
Case Nos.: (15-20080)
Decision Date: May 3, 2016
Rehearing Denied: October 14, 2016

| ---Date--- | -----Proceedings and Orders----- |
|-------------|---|
| Jan 12 2017 | Petition for a writ of certiorari filed. (Response due February 16, 2017) |
| Jan 24 2017 | Waiver of right of respondents Harris County, Texas, et al. to respond filed. |
| Feb 1 2017 | DISTRIBUTED for Conference of February 17, 2017. |

| ---Name----- | -----Address----- | ---Phone--- |
|---|--|----------------|
| Attorneys for Petitioner: | | |
| Alan Michael Mygatt-Tauber Counsel of Record | 10089 Ashley Circle NW Silverdale, WA 98383 | (253) 271-9585 |

Party name: Ebony Pratt, Individually and as Representative of the Estate of Wayne Pratt, Deceased

Attorneys for Respondents:

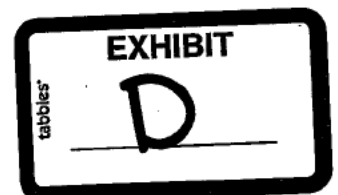
| | | |
|------------------------------------|--|----------------|
| Mary E. Baker Counsel of Record | Harris County Attorney's Office 1019 Congress, 15th Floor Houston, TX 77002 mary.baker@cao.hctx.net | (713) 274-5133 |
|------------------------------------|--|----------------|

Party name: Harris County, Texas, et al.

February 17, 2017 | Version 2014.2

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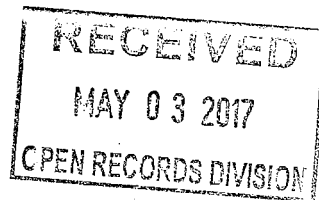
Supreme Court of the United States



May 1, 2017

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548
Attention: Open Records Committee

Certified Mail
Return Receipt Requested



465421-17
465421

Re: Public Information Request received 4/18/2017 from Douglas W. Atkinson to the Harris County Sheriff's Office requesting a complete copy of personnel file and Internal Affair Investigations pertaining to Officer Christopher Taylor. *HCSO File Number #17SO500953.*

Dear Attorney General Paxton:

On April 18, 2017, the Harris County Sheriff's Office received a written request by Douglas W. Atkinson for a complete copy of personnel file and Internal Affair Investigations pertaining to Officer Christopher Taylor, which we have deemed to be a request pursuant to the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.001-552.353. See Exhibit "A". We believe the requested information is excepted from public disclosure pursuant to sections 552.101 through 552.152 of the Government Code. A memorandum brief and the documents for which we are seeking an exception will be submitted within the appropriate time frame permitted by the Act.

Sincerely,

by CG.

Public Information Officer

Thomas Gilliland.
PRINT NAME

cc: Douglas W. Atkinson
Douglas W. Atkinson & Associates
322 Metcalf Street
Conroe, TX 77301-2856

HCSO Legal Department

Claudia Gallardo, Paralegal

1200 Baker Street

Houston, TX 77002

713-755-5668 Telephone

Legal Department Request for Records

Date: April 26, 2017

To: Grace Orellana (IAD/OIG)

From: Claudia Gallardo, LGL

Re: Open Records request received on April 18, 2017 from Douglas W. Atkinson from the Douglas W. Atkinson & Associates, P.L.L.C

We have received an open records request for a copy of any and all Internal Affairs file(s) pertaining to the following person:

(1) **Former Employee Christopher Taylor, PID 132427**

in order to timely comply, pursuant to State law, please copy or scan copies of the reports in your possession and have them delivered or e-mailed to me for review and forwarding, *as soon as possible*. As always, thank you for your usual prompt attention to this matter.

**Office of Inspector General
Investigative Division**

APR 26 2017

Douglas W. Atkinson & Associates, P.L.L.C.

ATTORNEYS AT LAW

322 Metcalf Street • Conroe, Texas 77301-2856

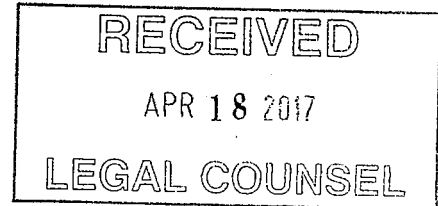
www.DouglasAtkinson.com

DOUGLAS W. ATKINSON

Telephone (936) 760-0303

Fax (936) 539-6228

April 11, 2017



Sheriff Ed Gonzalez
Harris County Sheriff's Office
1200 Baker Street
Houston, TX 77002

*Re: Texas Public Information Act Request for Information on the following:
Harris County Sheriff's Office: Officer Christopher Taylor*

Dear Sheriff Gonzalez:

Pursuant to Texas Government Code, Section 552, and also Tex. Loc. Gov't Code Ann. § 143, please consider this a request for a complete civil service personnel file on the above-referenced Officer employed at any time by the Harris County Sheriff's Office, including but not limited to, any Internal Affairs investigations, grievances, suspensions, disciplinary actions, conduct violations, instances of dishonesty, complaints, non-compliance, write-ups, certifications, testing performance, education performance, transfers, evaluations, progress reports, and statements made against Officer Christopher Taylor. Of course, I will be happy to pay reasonable copying expenses associated with this request.

Thank you in advance for your attention to this request and your anticipated compliance with the open record laws.

Sincerely,

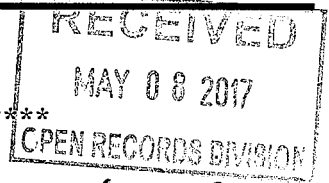
A handwritten signature in black ink, appearing to read "D. Atkinson".

Douglas W. Atkinson

DWA/sk

May 4, 2017

***** REQUEST FOR OPEN RECORDS LETTER RULING *****



665421
665866

Via First Class Mail CMRRR

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548
Attention: Open Records Committee

Re: Public Information Request received April 18, 2017 from Douglas W. Atkinson to the Harris County Sheriff's Office requesting a complete copy of personnel file and Internal Affair Investigations pertaining to Officer Christopher Taylor. *HCSO File Number #17SO500953.*

Dear Attorney General Paxton:

This is a follow-up to my letter dated May 1, 2017. See Exhibit "A1." On April 18, 2017, the Harris County Sheriff's Office received the enclosed written request by Douglas W. Atkinson for a complete copy of personnel file and Internal Affair Investigations pertaining to Officer Christopher Taylor See *Exhibit "A."*

By copy of this letter, the requestor is being notified that we believe the responsive information is excepted from public disclosure under the Texas Government Code § 552.108, and that if the requestor should have any questions regarding the Texas Public Information Act, he/she may contact the Office of the Attorney General's Hotline at (877) 673-6839. The Harris County Sheriff's Office advises that it will be releasing a portion of the responsive information to the requestor.

ARGUMENT AND AUTHORITY

The Harris County Sheriff's Office deems the subject request to be one pursuant to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001-552.353. The information has not been released, as the information requested appears to fall within an exception to the Public Information Act, TEX. GOV'T CODE ANN. §552.101 et. seq. The Harris County Sheriff's Office notes that the responsive information is voluminous; thus the Harris County Sheriff's Office has enclosed a representative sample See *Exhibit "B"* for your consideration.

The Public Information Act provides that "public information" means information that is collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." TEX. GOV'T

information falls within one of the Act's specific exceptions to disclosure. TEX. GOV'T CODE ANN. § 552.001, *et seq.*, *as amended*; Open Records Decision Nos. 511 (1988) and 363 (1983).

The information requested contains records that fall under §552.108 of the Texas Government Code, the "law enforcement exception." Section 552.108 (a)(2) provides that:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication ...

Gov't Code § 552.108(a)(2).

The Harris County Sheriff's Office advises that Exhibit "B" pertains to a criminal investigation that did not result in conviction or deferred adjudication. The Harris County Sheriff's Office advises that the investigation was concluded by the Harris County Grand Jury's Decision to not bill the suspect. See highlighted portion of Exhibit "C" which is part of the responsive information. Therefore, the HCSO believes the information contained in Exhibit "B" should be excepted from public disclosure under section 552.108(a)(2) because it concluded in a result other than conviction or deferred adjudication.

Section 552.101 of the Government Code

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision. "TEX. GOV'T CODE § 552.101. This section encompasses information protected by other statutes. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

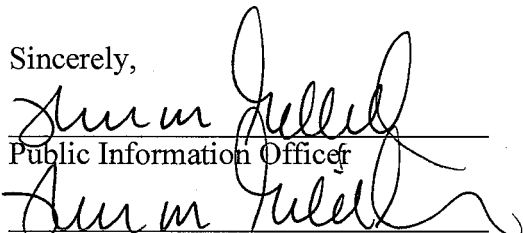
- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

TEX. OCC. CODE § 159-002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. TEX. OCC. CODE § 159.002(a), (b), (c); also Open Records Decision No. 598(1991). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release (reasons or purposes for the release, and (3) the person to whom the information is to be released. See TEX. OCC. CODE § 159.004, 005. After the death of a patient, medical records may be released only on the signed written consent of the deceased individual's personal representative. See *id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The submitted information pertains to a deceased individual. The requestor has not provided, or the Harris County Sheriff's Office otherwise received, the signed, written consent of the deceased's personal representative for the release of the submitted medical records pursuant to section 552.101 of the Government Code in conjunction with the MPA.

In this instance, the requestor has not provided, nor has the Harris County Sheriff's Office otherwise received, the signed consent of the deceased's personal representative. Therefore, the HCSO believes that it is prohibited from releasing the medical records contained in Exhibit "B."

The Harris County Sheriff's Office respectfully requests a ruling on this matter. Please do not hesitate to contact our office at (713) 755-6044 if you need additional information.

Sincerely,


Public Information Officer

PRINT NAME

cc: Douglas W. Atkinson
Douglas W. Atkinson & Associates
322 Metcalf Street
Conroe, TX 77301-2856

Douglas W. Atkinson & Associates, P.L.L.C.

ATTORNEYS AT LAW

322 Metcalf Street • Conroe, Texas 77301-2856

www.DouglasAtkinson.com

DOUGLAS W. ATKINSON

Telephone (936) 760-0303

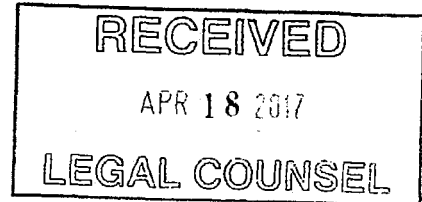
Fax (936) 539-6228

Office of Inspector General
Investigative Division

April 11, 2017

APR 26 2017

Sheriff Ed Gonzalez
Harris County Sheriff's Office
1200 Baker Street
Houston, TX 77002



Re: *Texas Public Information Act Request for Information on the following:*
Harris County Sheriff's Office: Officer Christopher Taylor

Dear Sheriff Gonzalez:

Pursuant to Texas Government Code, Section 552, and also Tex. Loc. Gov't Code Ann. § 143, please consider this a request for a complete civil service personnel file on the above-referenced Officer employed at any time by the Harris County Sheriff's Office, including but not limited to, any Internal Affairs investigations, grievances, suspensions, disciplinary actions, conduct violations, instances of dishonesty, complaints, non-compliance, write-ups, certifications, testing performance, education performance, transfers, evaluations, progress reports, and statements made against Officer Christopher Taylor. Of course, I will be happy to pay reasonable copying expenses associated with this request.

Thank you in advance for your attention to this request and your anticipated compliance with the open record laws.

Sincerely,

Douglas W. Atkinson

DWA/sk

May 1, 2017

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548
Attention: Open Records Committee

Certified Mail
Return Receipt Requested



Re: Public Information Request received 4/18/2017 from Douglas W. Atkinson to the Harris County Sheriff's Office requesting a complete copy of personnel file and Internal Affair Investigations pertaining to Officer Christopher Taylor. *HCSO File Number #17SO500953.*

Dear Attorney General Paxton:

On April 18, 2017, the Harris County Sheriff's Office received a written request by Douglas W. Atkinson for a complete copy of personnel file and Internal Affair Investigations pertaining to Officer Christopher Taylor, which we have deemed to be a request pursuant to the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.001-552.353. See Exhibit "A". We believe the requested information is excepted from public disclosure pursuant to sections 552.101 through 552.152 of the Government Code. A memorandum brief and the documents for which we are seeking an exception will be submitted within the appropriate time frame permitted by the Act.

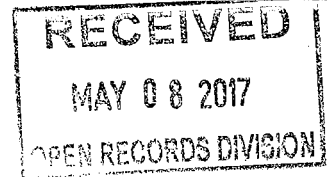
Sincerely,

by CG.

Public Information Officer

Thomas Gilliland.
PRINT NAME

cc: Douglas W. Atkinson
Douglas W. Atkinson & Associates
322 Metcalf Street
Conroe, TX 77301-2856



May 5, 2017

***** REQUEST FOR OPEN RECORDS LETTER RULING *****

665421
665865

Via First Class Mail CMRRR

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548
Attention: Open Records Committee

***Certified Mail
Return Receipt Requested***

Re: Public Information Request received April 18, 2017 from Douglas W. Atkinson to the Harris County Sheriff's Office requesting a complete copy of personnel file and Internal Affari Investigations pertaining to Officer Christopher Taylor.
HCSO File Number #17SO500953.

Dear Attorney General Paxton:

On May 4, 2017, I mailed *HCSO File Number #17SO500953* to your office. I inadvertently neglected to enclose *Exhibit "B"* (a CD-R). I hereby rectify this matter by submitting *Exhibit "B"*. Please see enclosed.

Please do not hesitate to contact our office at (713) 755-6044 if you need additional information.

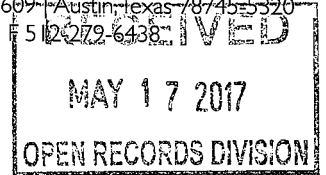
Sincerely,

Wilson Gomez

San Antonio | Austin | Rio Grande Valley

2500 W. William Cannon, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

May 15, 2017



The Honorable Ken Paxton, Attorney General
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

via **CMERR #91 7199 991 7037**
9859 4019

666513
667453

Re: Request for Attorney General Decision Under TEX. GOV'T CODE § 552.301
Requestor: Cynthia Frederick
Entity: City of Rosenberg, Texas (hereinafter, the "City")
Date received: April 24, 2017
City ID No.: R-2017-0006

Dear Attorney General Paxton:

On April 24, 2017, the City received a Texas Public Information Act ("Act") request, via fax, from Cynthia Frederick, (see **Exhibit A**).

Pursuant to section 552.301 of the Government Code, the City hereby requests a decision from the Attorney General about whether the requested information is excepted from disclosure under the Act. In our letter to the Attorney General dated May 8, 2017, regarding the subject matter of this request (see **Exhibit B**), the City claimed that the requested information is not information that is collected, assembled, or maintained under a law or ordinance or about the transaction of official business by a governmental body or for a governmental body or is excepted from disclosure under one of the enumerated exceptions in Chapter 552. This letter will serve as the City's brief in its request for a decision from the Attorney General as to whether the requested information and/or any portions thereof are excepted from disclosure under the Act. See Tex. Gov't Code § 552.301(a), (b). The City asserts that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103 and 552.108 of the Government Code.

Background

In her request, the Requestor sought from the City:

*...a copy of the following information maintained by Fort Bend County, its District Attorney, its Assistant District Attorney(s), its Sheriff's Office(s), its Justice of the Peace Office(s), or any other Public Information Officer in charge of the records requested below from **December 1, 2016 through date of this Request:***

Requested Records:

1. ANY AND ALL RECORDS, including but not limited to any reports and/or any investigation reports pertaining the arrest and death of **Roberto Velasquez (DOB 1/31/1977; DOD: 12/3/2016)**.; including but not limited to any type of incident report; any type of report created by any investigating officer(s); any type of supplemental report; any type of witness statements; any type of office notes and/or field notes; printouts of any type of data stored on any computer hard-drive(s), diskette(s), tape(s), and/or CD-ROMS, including any e-mail transmission(s); any type of telephone memos; any videotapes, audiotapes, photographs, drawings, and/or charts;
2. Any investigative Audios, interviews, etc. whether reduced to written form and/or recorded;
3. All Witness statement audios and paper, interviews, etc.;
4. All 911 calls associated with this incident;
5. All dispatch audios associated with this incident;
6. All Videos contained within the file and/or associated with this incident;
7. Any and all photographs;
8. **All Autopsies, Toxicology and any other medical and/or tests contained within the final report;**
9. All investigative reports, sub reports, supplemental reports, associated reports contained within these records and associated with this incident by each investigating officer and/or patrolman/or any other chief or officer associated with this crash report and investigation;
10. All communications, emails, etc. associated with the investigation into this incident and associated with this incident through the grand jury hearing;
11. All rough notes, if any, associated with this incident: (sic)

The City believes the requested information may be excepted from disclosure because it anticipates litigation regarding this incident on behalf of the decedent's family and has received written notification from the attorney representing the family. (See **Exhibit D**). In addition, the City believes that the requested information is excepted from disclosure because the criminal investigation undertaken by the Texas Rangers has not

yet been finalized. Further, the Fort Bend County District Attorney's Office performed its own investigation and determined that it would not pursue criminal charges. Attached is a memorandum (see **Exhibit C**) from Rosenberg Police Department confirming the status of the criminal investigations.

Representative Sample

Except for records that may have been provided to the City, the City does not have access to information maintained by Fort Bend County, its District Attorney, its Assistant District Attorney(s), its Sheriff's Office(s), its Justice of the Peace Office(s), or any other Public Information Officer. The City is responding with records in its possession. Due to the voluminous nature of this request, the City is submitting a representative sample of the requested, responsive information (see **Exhibits E**, and **E1**) for review by the Attorney General, pursuant to Government Code Section 552.301(e)(1)(D). Once the Attorney General has issued a ruling regarding the responsive information, the City will apply the parameters set forth by the ruling.

Automatic Redactions¹

If ordered to release any information the City will automatically redact vehicle identification numbers, license plate numbers, driver's license numbers, and title information contained in the documents at issue as allowed by Government Code section 552.130(c). The City will provide the Requestor with the form prescribed by the attorney general as required by section 552.130(e).

Audio/Video Redactions

Attached as **Exhibit E1** is a flash drive containing a representative sample of audio and video recordings pertaining to the aforementioned incident. To the extent that your office determines that these recordings are subject to disclosure, the City is unable to comply with this request if your office determines that certain footage requires redaction as the City's IT Department does not have the capabilities to redact information from the video and audio recordings. Accordingly, even if the recordings are subject to release to the Requestor, they must nonetheless be withheld in their entirety since the City is incapable of redacting the required information.²

¹ Automatic redactions are highlight in grey in **Exhibit E**

² See Open Records Decision OR2010-13701A.

Arguments for Attorney General Review

§ 552.103 Information Relating to Litigation

The City believes that the information provided to your office (see **Exhibit E**, and **E1**) may be excepted from public disclosure under this section since there is anticipated litigation. Section 552.103(a) of the Texas Government Code, the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or *may be* a party. The City has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body receives the request for information and (2) the information at issue is related to that litigation.³

Attached hereto as **Exhibit D** is a copy of the letter providing Notice of Representation and Request for Preservation of Evidence from the attorney representing the decedent’s wife. Based on the notice of representation and the fact that the incident in question occurred at the Rosenberg Jail facility, the City anticipates that a civil lawsuit will be filed against the City on behalf of the decedent and spouse. The requested documents relate to the facts and circumstances of the in-custody death of the decedent. The City seeks to protect its legal position in the anticipated litigation. The City, as a political subdivision of the State, believes it will be named in a civil lawsuit and seeks to withhold all of the information in its possession as allowed by section 552.103.

§ 552.108 Certain Law Enforcement, Corrections, and Prosecutorial Information

The City believes that the information at issue (see **Exhibits E**, and **E1**), may be exempted from disclosure pursuant to Section 552.108(b) of the Government Code, which states:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirement of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:

³ *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990).

- (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
- (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Where an investigation by a law enforcement agency is active at the time of the request, your office has found a presumption exists that release of the investigatory information would interfere with law enforcement. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Tex. Att'y Gen. ORD-216 (1978).

Further, the City asserts that the information in the documents at issue (**Exhibits E, and E1**) should be excepted from public disclosure under this section pursuant to Section 552.108(a)(2) of the Government Code which states, "it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication" and in the alternative, pursuant to Section 552.108(b)(2) which states, "the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication".

Exhibits E, and E1 contain information that is held by a law enforcement agency that deals with the detection, investigation and potential prosecution of a crime. Separate in-custody death investigations were conducted by the Fort Bend County District Attorney and the Texas Rangers to determine if any misconduct occurred that would warrant criminal charges.

The information in the documents at issue (see (**Exhibits E, and E1**)) relates to a case that was investigated as a criminal matters that did not result in a conviction or deferred adjudication. The documents at issue describe the investigative and evidentiary gathering techniques of law enforcement officials which if disclosed could interfere with other future investigations. You are referred to **Exhibit C** from the Rosenberg Police Department indicating that the Fort Bend County Grand Jury took no action on the incident in question and further prosecution of the case was not undertaken as to this report.

The investigation being conducted by the Texas Rangers has not yet been finalized. Please see **Exhibit C** from the Rosenberg Police Department indicating the pending status of the final report from the Texas Rangers on said investigation. The public release of information could hinder any continued investigation by the Rangers and if released to the public could influence witness statements to law enforcement personnel and affect the validity of such statements.

§ 552.101 Information Confidential by Law

The City believes that the information at issue (see pink highlighted information contained in **Exhibit E**), should be excepted from public disclosure under this section due to information held confidential by law, either constitutional, statutory, or by judicial decision..

Family Code Section 261.201

In conjunction with Government Code section 552.101 the City asserts section 261.201 of the Texas Family Code. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Tex. Fam. Code § 261.201(a).

Normally, information held confidential pursuant to section 261.201 is releasable to a minor victim's parent as long as the parent is not alleged to have committed the alleged abuse. See Tex. Fam. Code § 261.201(k). In this matter, however, the Requestor is not the minor victim's parent and has not provided any evidence that she has a "special access" to information in the **Exhibit E** (see pink highlighted information). Accordingly, the City believes that the information related to the minor victim must be withheld as a matter of law.

Dates of Birth of General Public

The City asserts that dates of birth of the general public and not belonging to the Requestor are excepted from disclosure. In a recent finding in *Ken Paxton, Attorney General of Texas v. City of Dallas*, Cause No. 03-13-00546-CV, in the Third Court of Appeals, in Austin, Texas, the Court of Appeals determined that dates of birth are now

The Honorable Ken Paxton, Attorney General

May 15, 2017

7 | Page

excepted from disclosure. Therefore, the dates of birth (see yellow highlights in **Exhibit E**) should be excepted from disclosure.

Private Citizen's Criminal History

The City asserts that a portion of the documents at issue may be excepted from disclosure under Section 552.101 as it contains criminal history record information ("CHRI") considered to be confidential by law pursuant to the doctrine of common law privacy. (See **Exhibit E** pages 48 – 58). Your office has previously held that "a compilation of a private citizen's criminal history is generally not of legitimate concern to the public".⁴ Additionally, your office has held that "to the extent the city maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the city must withhold such information under section 552.101 in conjunction with common-law privacy."⁵ As your office has previously held, "a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person."⁶ Accordingly, the City believes that the report, at least with respect to the individual listed as a suspect, is not subject to disclosure as a matter of law pursuant to common law privacy.

The City respectfully requests that the Attorney General issues a ruling to determine whether the information at issue may be excepted from disclosure. Should you have any questions or concerns, please contact our office at (512) 279-6431.

Should you have any questions or concerns, please contact our office at (512) 279-6431.

Very truly yours,

Denton Navarro Rocha Bernal Hyde & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



CYNTHIA TREVINO
Assistant City Attorney
City of Rosenberg, Texas

CT/ha
Enclosures: As stated

⁴ See Tex. Atty. General Opinion OR2010-11761.

⁵ See Id.

⁶ See Id.

The Honorable Ken Paxton, Attorney General

May 15, 2017

8 | Page

cc: Cynthia Frederick
The Frederick Law Firm, PLLC
300 Wesleyan, Suite 358
Houston, Texas 77027
(w/o enclosures)

via CMERRR #91 7199 9991 7037 9859
4026 and First Class Mail

THE FREDERICK LAW FIRM, P.L.L.C.

3000 Wesleyan, Suite 358

Houston, Texas 77027

(713)581-3880 Telephone

(713)581-3891 Facsimile

April 24, 2017

PUBLIC INFORMATION & RECORDS REQUESTS

Public Information Officer
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

Via Facsimile: 832-595-3731

Re: Roberto Velasquez, Sr.
Date of Custody: 12/2/2016
Date of Death while in Custody: 12/3/2016
Date of Birth: 01/31/1977

To Public Information Officer:

I am writing pursuant to the Texas Public Information Act, Texas Government Code Ch. 552, to request that you send me a copy of the following information maintained by Fort Bend County, its District Attorney, its Assistant District Attorney(s), its Sheriff's Office(s), its Justice of the Peace Office(s), or any other Public Information Officer in charge of the records requested below from **December 1, 2016 through date of this Request:**

APR24 17 010700

Requested Records:

1. ANY AND ALL RECORDS, including but not limited to any reports and/or any investigation reports pertaining the arrest and death of **Roberto Velasquez (DOB 1/31/1977; DOD: 12/3/2016)**; including but not limited to any type of incident report; any type of report created by any investigating officer(s); any type of supplemental report; any type of witness statements; any type of office notes and/or field notes; printouts of any type of data stored on any computer hard-drive(s), diskette(s), tape(s), and/or CD-ROMS, including any e-mail transmission(s); any type of telephone memos; any videotapes, audiotapes, photographs, drawings, and/or charts;
2. All investigative Audios, interviews, etc. whether reduced to written form and/or recorded;
3. All Witness statement audios and paper, interviews, etc.;
4. All 911 calls associated with this incident;
5. All dispatch audios associated with this incident;
6. All Videos contained within the file and/or associated with this incident;
7. Any and all photographs;
8. All Autopsies, Toxicology and any other medical and/or tests contained within the final report;

Exhibit A

Public Information Officer
Rosenberg Police Department
April 24, 2017
Page 2

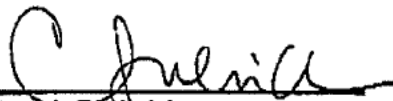
-
9. All investigative reports, sub reports, supplemental reports, associated reports contained within these records and associated with this incident by each investigating officer and/or patrolman/or any other chief or officer associated with this crash report and investigation:.
10. All communications, emails, etc. associated with the investigation into this incident and associated with this incident through the grand jury hearing:
11. All rough notes, if any, associated with this incident:

I would appreciate the requested materials at your earliest convenience, and anticipate your response on or before May 15, 2017. Materials may be produced on a rolling basis as they become available. Materials may be sent by e-mail (preferably) to
or by fax to (713) 581-3891, or by mail to 3000
Weslayan, Suite 358, Houston, TX 77027. I am willing to pay the statutory fee for copying these materials.

Please feel free to contact me or my paralegal, Lisa Seltenreich, if you have any questions. My phone number is (713) 581-3880. Thank you for your assistance in this matter.

Very truly yours,

THE FREDERICK LAW FIRM, PLLC


Cynthia Frederick

San Antonio | Austin | Rio Grande Valley
2500 W. William Cannon, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

May 8, 2017

The Honorable Ken Paxton, Attorney General
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

via **CMERR #91 7199 991 7037**
9773 1910

Re: Request for Attorney General Decision Under TEX. GOV'T CODE § 552.301
Requestor: Cynthia Frederick
Entity: City of Rosenberg, Texas (hereinafter, the "City")
Date received: April 24, 2017
City ID No.: R-2017-0006

Dear Attorney General Paxton:

On April 24, 2017, the City received a Texas Public Information Act ("Act") request, via fax, from Cynthia Frederick, (see **Exhibit A**).

Pursuant to section 552.301 of the Government Code, the City hereby requests a decision from the Attorney General about whether the requested information is excepted from disclosure under the Act. Specifically, the City claims that the requested information is not information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body or is excepted from disclosure as: (1) information made confidential by law under section 552.101; (2) certain personnel information under section 552.102; (3) information concerning litigation or settlement negotiations involving the state or a political subdivision under section 552.103; (4) information relating to competition or bidding under 552.104; (5) information relating to location or price of property under section 552.105; (6) information relating to certain legislative documents under section 552.106; (7) information pertaining to certain legal matters under section 552.107; (8) information concerning certain law enforcement records under section 552.108; (9) information concerning certain private communications of an elected office-holder under section 552.109; (10) certain trade secrets and certain commercial information under section 552.110; (11) agency memoranda under section 552.111; (12) certain information related to the regulation of financial institutions or securities under section 552.112; (13) geological or geophysical information under section 552.113; (14) student records under

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The Honorable Ken Paxton, Attorney General

May 8, 2017

3 | Page

proprietary records and trade secrets involved in certain partnerships under section 552.153; (59) information concerning name of applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas under section 552.154; (60) information regarding the confidentiality of certain property tax appraisal photographs under section 552.155; and (61) information regarding the confidentiality of continuity of operations plan under section 552.156.

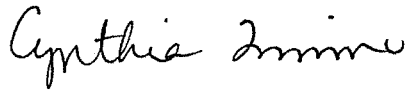
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In accordance with section 552.301(e) of the Act, the City will be sending, within fifteen (15) business days of the date that it received the request for information: (1) written comments stating the reasons why the stated exceptions apply that would allow the information at issue to be withheld from the requestor; (2) a copy of the written request for information indicating the date on which it was received by the City or a statement certifying when the City received it; and (3) a copy of the specific information requested, or representative samples of the information, labeled to indicate which exceptions to disclosure apply to which parts of the copy.

Should you have any questions or concerns, please contact our office at (512) 279-6431.

Very truly yours,

Denton Navarro Rocha Bernal Hyde & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



CYNTHIA TREVINO
Assistant City Attorney
City of Rosenberg, Texas

CT/ha

Enclosure: As stated

cc: Cynthia Frederick
The Frederick Law Firm, PLLC
300 Wesleyan, Suite 358
Houston, Texas 77027
(w/o enclosure)

via CMERRR #91 7199 9991 7037 9773
1903 and First Class Mail

THE FREDERICK LAW FIRM, P.L.L.C.

3000 Wesleyan, Suite 358

Houston, Texas 77027

(713)581-3880 Telephone

(713)581-3891 Facsimile

April 24, 2017

PUBLIC INFORMATION & RECORDS REQUESTS

Public Information Officer
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

Via Facsimile: 832-595-3731

Re: Roberto Velasquez, Sr.
Date of Custody: 12/2/2016
Date of Death while in Custody: 12/3/2016
Date of Birth: 01/31/1977

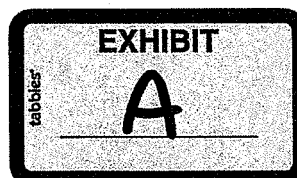
To Public Information Officer:

I am writing pursuant to the Texas Public Information Act, Texas Government Code Ch. 552, to request that you send me a copy of the following information maintained by Fort Bend County, its District Attorney, its Assistant District Attorney(s), its Sheriff's Office(s), its Justice of the Peace Office(s), or any other Public Information Officer in charge of the records requested below from **December 1, 2016 through date of this Request:**

APR 24 17 9:07AM

Requested Records:

1. ANY AND ALL RECORDS, including but not limited to any reports and/or any investigation reports pertaining the arrest and death of **Roberto Velasquez (DOB 1/31/1977; DOD: 12/3/2016)**; including but not limited to any type of incident report; any type of report created by any investigating officer(s); any type of supplemental report; any type of witness statements; any type of office notes and/or field notes; printouts of any type of data stored on any computer hard-drive(s), diskette(s), tape(s), and/or CD-ROMS, including any e-mail transmission(s); any type of telephone memos; any videotapes, audiotapes, photographs, drawings, and/or charts;
2. All investigative Audios, interviews, etc. whether reduced to written form and/or recorded;
3. All Witness statement audios and paper, interviews, etc.;
4. All 911 calls associated with this incident;
5. All dispatch audios associated with this incident;
6. All Videos contained within the file and/or associated with this incident;
7. Any and all photographs;
8. All Autopsies, Toxicology and any other medical and/or tests contained within the final report;

**Exhibit B**

Public Information Officer
Rosenberg Police Department
April 24, 2017
Page 2

-
9. All investigative reports, sub reports, supplemental reports, associated reports contained within these records and associated with this incident by each investigating officer and/or patrolman/or any other chief or officer associated with this crash report and investigation.
10. All communications, emails, etc. associated with the investigation into this incident and associated with this incident through the grand jury hearing.
11. All rough notes, if any, associated with this incident.

I would appreciate the requested materials at your earliest convenience, and anticipate your response on or before May 15, 2017. Materials may be produced on a rolling basis as they become available. Materials may be sent by e-mail (preferably) to
or by fax to (713) 581-3891, or by mail to 3000
Weslayan, Suite 358, Houston, TX 77027. I am willing to pay the statutory fee for copying these materials.

Please feel free to contact me or my paralegal, Lisa Seltenreich, if you have any questions. My phone number is (713) 581-3880. Thank you for your assistance in this matter.

Very truly yours,

THE FREDERICK LAW FIRM, PLLC

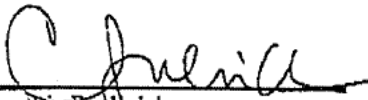

Cynthia Frederick

Exhibit C



To: James Murray, Lieutenant Professional Standards

From: Dallis Warren, Police Chief

Date: May 10, 2017

Ref: In custody Death – Level One Complaint

On Wednesday, May 10, 2017, I met with Lt. James Murray regarding a level one complaint. Lt. Murray provided me with documentation indicating the following:

On December 02, 2016, Officer A. Guerrero responded to a possible assault. Roberto Velasquez (DOB: 01/31/77) was arrested for outstanding warrants and transported to the Rosenberg City Jail where he was booked in.

On December 02, 2016, Officers W. Henry and P. Martin conducted a jail check and found Velasquez lying on the floor unresponsive and notified Communications to have EMS make location.

On January 24, 2017, we received the report from the Medical Examiner indicating that the official cause of death was death by blunt force trauma of the head – accident.

On March 27, 2017, the Fort Bend County Grand Jury took no action with this incident and Rosenberg Police Department was exonerated in the death of Roberto Velasquez.

Lt. Murray advised that he was in the process of obtaining reports from Ranger Cenicerros and Inv. Claiborn, who investigated this in custody death.

After reviewing the documents and evidence provided, I'm requesting Lt. Murray to initiate an administrative investigation, concerning this level one complaint.

A handwritten signature of Dallis Warren, the Police Chief, is shown above a horizontal line.

Dallis Warren, Chief

5-10-17

Date

DEC/13/2016/TUE 04:13 PM R.B. Bormaster

FAX No. 281-652-5886

P. 001



2425 FOUNTAIN VIEW, STE. 300
HOUSTON, TEXAS 77057

OFFICE: (713) 714-4000
FAX: (281) 652-5886

FAX COVER SHEET

DATE: 12/13/2016
TO: Rosenberg
FAX NO: 832-595-3711
FROM: Wesley Bias, Paralegal to Ryan Bormaster
PAGES: 3
RE: Wrongful Death of Roberto Velasquez
Date of Incident: 12/02/216

MESSAGE

To Whom It May Concern,

I have enclosed a notice of representation for the above mentioned matter.

Thank You,

Wesley Bais
Paralegal to Ryan Bormaster

CONFIDENTIALITY NOTICE: The information transmitted with this cover page is privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this transmittal is not the intended recipient, or the employee, agent or representative of the intended recipient responsible for delivery of this transmittal to the named recipient, you are hereby notified that any dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this in error, please immediately contact the sender at the above telephone number and return the original fax transmittal to us at the above address by U.S. mail.



LIFE MEMBER
MILLION DOLLAR ADVOCATES FORUM
The Top Trial Lawyers in America™

Super Lawyers

RIISING STARS 2014

R.B. Bormaster & Associates, P.C. ♦ 2425 Fountain View, Suite 300 ♦ Houston, Texas 77057

DEC/13/2016/TUE 04:13 PM R.B. Bormaster

FAX No. 281-652-5886

P. 002



R. B. Bormaster & Associates, P.C.

2425 FOUNTAIN VIEW, SUITE 300
HOUSTON, TEXAS 77057

OFFICE: (713) 714-4000
FAX: (281) 652-5886

December 13, 2016

Via Facsimile: 832-595-3711

City of Rosenberg

Attn: Mayor Cynthia A. McConathy

Attn: Dallis Warren, Chief of Police

2110 4th Street

Rosenberg, Texas 77471

RE: Wrongful Death of Roberto Velasquez
Date of Incident: 12/02/2016

NOTICE OF REPRESENTATION AND REQUEST OF PRESERVATION OF EVIDENCE

To Whom It May Concern:

Juanita Vargas has retained this firm to pursue a wrongful death claim related to an incident that occurred on or about December 2, 2016, when her husband, Roberto Velasquez, died in police custody. Please direct any and all communication regarding same to this office.

You are hereby placed on notice, pursuant to *Walmart Stores, Inc. v. Johnson*, 106 S.W.3d 718 (Tex. 2003) as reaffirmed in *Whirlpool Corp. v. Camacho*, 251 S.W.3d 88 (Tex. App.—Corpus Christi 2008) to preserve all evidence that is in any way related to this incident. This includes but is not limited to any and all pictures, videos, slides, recordings (whether video or audio), computer data, data from all electronic recorders (video or otherwise) of the Rosenberg and/or Fort Bend County Jail and all phone information including call logs, police and/or court records. This also includes any discoverable field investigation reports, documents, notes and pictures; witness statements and claims information as well as any and all documents relating in any way to internal investigations that may have occurred.



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R.B. Bormaster & Associates, P.C. ♦ 2425 Fountain View, Suite 300 ♦ Houston, Texas 77057

Exhibit D

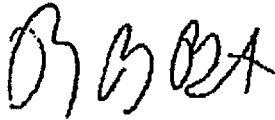
DEC/13/2016/TUE 04:14 PM R.B. Bormaster

FAX No. 281-652-5886

P. 003

Should you have any questions or concerns, please do not hesitate to call me, or contact my Paralegal, Wesley Bias at 713-714-4000. I look forward to hearing from you soon.

Very truly yours,



Ryan B. Bormaster

RBB/wb



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MILLION DOLLAR ADVOCATES FORUM
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Super Lawyers

RIISING STARS 2014

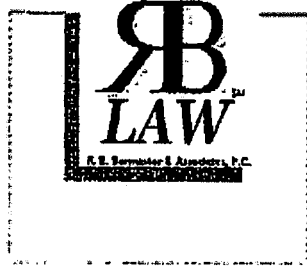
R.B. Bormaster & Associates, P.C. ♦ 2425 Fountain View, Suite 300 ♦ Houston, Texas 77057

Exhibit D

DEC/13/2016/TUE 04:11 PM R.B. Bormaster

FAX No. 281-652-5886

P. 001



2425 FOUNTAIN VIEW, STE. 300
HOUSTON, TEXAS 77057

OFFICE: (713) 714-4000
FAX: (281) 652-5886

FAX COVER SHEET

DATE: 12/13/2016
TO: Rosenberg
FAX NO: 832-595-3711
FROM: Wesley Bias, Paralegal to Ryan Bormaster
PAGES: 3
RE: Wrongful Death of Roberto Velasquez a/n/f Juania Vargas
Date of Incident: 12/02/216

MESSAGE

To Whom It May Concern,

I have enclosed a notice of representation for the above mentioned matter.

Thank You,

Wesley Bais
Paralegal to Ryan Bormaster

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Super Lawyers

RISEING STARS 2014

R.B. Bormaster & Associates, P.C. ♦ 24 **Exhibit D**ew, Suite 300 ♦ Houston, Texas 77057

DEC/13/2016/TUE 04:11 PM R.B. Bormaster

FAX No. 281-652-5886

P. 002



2425 FOUNTAIN VIEW, SUITE 300
HOUSTON, TEXAS 77057

OFFICE: (713) 714-4000
FAX: (281) 652-5886

December 13, 2016

Via Facsimile: 832-595-3711

City of Rosenberg

Attn: Mayor Cynthia A. McConathy

Attn: Dallis Warren, Chief of Police

2110 4th Street

Rosenberg, Texas 77471

RE: Wrongful Death of Roberto Velasquez
Date of Incident: 12/02/2016

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RIISING STARS 2014

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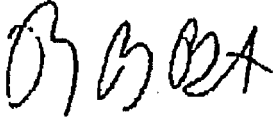
DEC/13/2016/TUE 04:12 PM R.B. Bormaster

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Ryan B. Bormaster

RBB/wb



LIFE MEMBER
MILLION DOLLAR ADVOCATES FORUM
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RISEING STARS 2014

R.B. Bormaster & Associates, P.C. ♦ 242 **Exhibit D** Main View, Suite 300 ♦ Houston, Texas 77057

San Antonio | Austin | Rio Grande Valley
2500 W. William Cannon, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

May 8, 2017

DR-666513-17
666513

The Honorable Ken Paxton, Attorney General
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

via **CMERR #91 7199 991 7037**
9773 1910

Re: Request for Attorney General Decision Under TEX. GOV'T CODE § 552.301
Requestor: Cynthia Frederick
Entity: City of Rosenberg, Texas (hereinafter, the "City")
Date received: April 24, 2017
City ID No.: R-2017-0006

Dear Attorney General Paxton:

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The Honorable Ken Paxton, Attorney General

May 8, 2017

3 | Page

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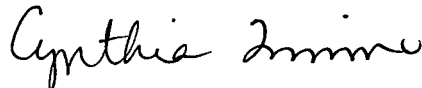
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Very truly yours,

Denton Navarro Rocha Bernal Hyde & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



CYNTHIA TREVINO
Assistant City Attorney
City of Rosenberg, Texas

CT/ha

Enclosure: As stated

cc: Cynthia Frederick
The Frederick Law Firm, PLLC
300 Wesleyan, Suite 358
Houston, Texas 77027
(w/o enclosure)

via CMERRR #91 7199 9991 7037 9773
1903 and First Class Mail

THE FREDERICK LAW FIRM, P.L.L.C.

3000 Wesleyan, Suite 358

Houston, Texas 77027

(713)581-3880 Telephone

(713)581-3891 Facsimile

April 24, 2017

PUBLIC INFORMATION & RECORDS REQUESTS

Public Information Officer
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

Via Facsimile: 832-595-3731

Re: Roberto Velasquez, Sr.

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Date of Death while in Custody:

12/3/2016

Date of Birth:

01/31/1977

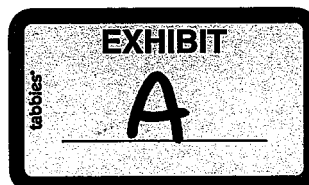
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RFR24 17 8:57AM

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2. All investigative Audios, interviews, etc. whether reduced to written form and/or recorded;
3. All Witness statement audios and paper, interviews, etc.;
4. All 911 calls associated with this incident;
5. All dispatch audios associated with this incident;
6. All Videos contained within the file and/or associated with this incident;
7. Any and all photographs;
8. **All Autopsies, Toxicology and any other medical and/or tests contained within the final report;**



Public Information Officer
Rosenberg Police Department
April 24, 2017
Page 2

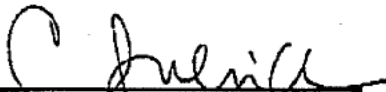
-
9. All investigative reports, sub reports, supplemental reports, associated reports contained within these records and associated with this incident by each investigating officer and/or patrolman/or any other chief or officer associated with this crash report and investigation.
10. All communications, emails, etc. associated with the investigation into this incident and associated with this incident through the grand jury hearing:
11. All rough notes, if any, associated with this incident:

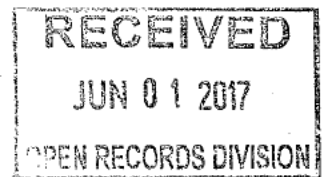
I would appreciate the requested materials at your earliest convenience, and anticipate your response on or before May 15, 2017. Materials may be produced on a rolling basis as they become available. Materials may be sent by e-mail (preferably) to
or by fax to (713) 581-3891, or by mail to 3000
Weslayan, Suite 358, Houston, TX 77027. I am willing to pay the statutory fee for copying these materials.

Please feel free to contact me or my paralegal, Lisa Seltenreich, if you have any questions. My phone number is (713) 581-3880. Thank you for your assistance in this matter.

Very truly yours,

THE FREDERICK LAW FIRM, PLLC


Cynthia Frederick



CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

May 30, 2017

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

66-669656-17
669656

Re: Request for an Open Records Decision
Our File No.: W170246

Dear Sirs:

On May 15, 2017, the city of San Antonio received an open records request from Emilie Eaton. A copy of that request is enclosed. May 29, 2017, was a city holiday (Memorial Day), so city offices were closed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

James Kopp
Assistant City Attorney

cc: Emilie Eaton

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W170246-053017

Date Submitted: 5/15/2017 8:00:00 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 5/30/2017 5:00:00 PM

Requestor:

Emilie Eaton

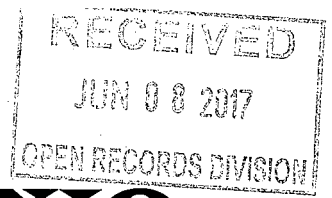
Express News

San Antonio, TX 78210

707-366-2248

Information Requested:

Describe the document(s) you are requesting: I realized today that it's been two weeks since the external review of the Marquise Jones case began. Has the law firm finished the report yet, and if so, can I have a copy? From: Eaton, Emilie Sent: Monday, May 15, 2017 2:13 PM Subject: [EXTERNAL] RE: Following up To: Thea Setterbo (GPA) Hey Thea, Hope you're doing well. Has the report been finalized?



CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

June 6, 2017

669656
670661

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling

Requestor 1: Emilie Eaton, Express News
Date request received: May 15, 2017
COSA File No. W170246

Requestor 2: Roland Smith
Date request received: June 5, 2017
COSA File No. W171082

Dear Assistant Attorney General:

On May 15, 2017, the City of San Antonio ("City") received a public information request from Emilie Eaton, Express News, which requested a report prepared by the City's attorney hired to conduct a review and provide legal analysis [**Attachment 1A - Request**]. May 29, 2017, was a City holiday (Memorial Day), so City offices were closed. On May 30, 2017, the City sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [**Attachment 2 – 10 Day Letter**].

On June 5, 2017, the City of San Antonio received a public information request from Roland Smith, which requested the same information [**Attachment 1B - Request**]. For the convenience of the Attorney General's Office, these two requests are consolidated in this Request for a Ruling, and the City now submits the records at issue, and legal argument supporting the application of the exceptions claimed [**Attachment 3 – Responsive Documents**].

Background Information

An issue arose in a federal lawsuit in which the City of San Antonio was a party, related to the chain of custody and evidentiary testing of a handgun. The City sought legal advice, so First Assistant City Attorney, Elizabeth Provencio, retained outside legal counsel on behalf of the

City, Kyle Watson, to give legal advice on the chain of custody issues involving the handgun [Attachment 4 – Engagement Letter]. Kyle Watson is an attorney licensed to practice law in the State of Texas. As part of his legal services, Mr. Watson was “to conduct an independent fact investigation” as part of preparing his legal analysis [Attachment 4]. In response, Mr. Watson conducted an investigation and prepared a report [Attachment 3] that included his findings along with his legal opinions and legal analyses of the issues at hand. He further made recommendations in his report based upon those facts, legal opinions and legal analyses.

Arguments and Authorities

The Attorney General’s Office established the framework for consideration of legal issues related to the attorney-client privilege in ORD No. 676 (2002). The principles enunciated in this ORD are still in place, as evidenced by a decision submitted to the city in February, 2017, OR2017-03785.

Public Information Act §552.022 provides an exception to disclosure for information made confidential under “other law.” The Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of §552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Texas Rule of Evidence 503 provides:

(b) Rules of Privilege.

(1) *General Rule*. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

“A communication is ‘confidential’ if not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the information.” Tex. R. Evid. 503(b)(1).

The investigation report was a confidential communication, not intended to be disclosed to third persons, and prepared and provided to the City Attorney by its outside lawyer in furtherance of the rendition of professional legal services pursuant to the Letter of Engagement. The report has not been shared with anyone outside the City, and was only viewed by a few persons within the City who are lawyers with the City Attorney’s office, or those City officials, who are clients of the City Attorney’s Office, who have supervisory

authority over the Police Department [**Attachment 5 – List of Individuals Referenced within Documents and their Relationship to the City**]. Tex. R. Evid. 503(c)(1) permits the client to claim the privilege. The City Attorney's office, as the client, asserts its right as a client to exempt the entire investigation report and information provided as part of the investigation as confidential attorney-client communications. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 333-334 (Tex. App.-Austin 2000, pet. denied) (holding that the attorney-client privilege applied to the entire investigative report where the school district sought legal advice). The City of San Antonio, as the client of the City Attorney's Office, likewise claims the privilege to prevent release of this information.

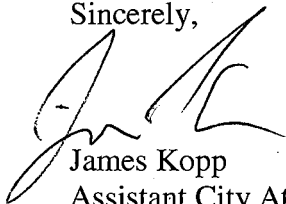
In *Paxton v. City of Dallas*, 509 S.W.3d 247, 267-68 (Tex. 2017), the Texas Supreme Court recognized the importance of attorney-client communications by holding: "the significant interests supporting withholding confidential and privileged attorney-client communications outweigh the competing interests supporting disclosure. We therefore conclude a 'compelling reason' to withhold confidential attorney-client communications exists and, absent waiver, rebuts the presumption that the information protected by the privilege is subject to required public disclosure."

In *Paxton*, the City of Dallas and the Attorney General's office agreed that "the PIA excepts attorney-client communications from public disclosure," but disagreed "about whether protection is afforded under the confidential-by-law exception or the attorney-client exception." *Paxton* at 253. The City therefore further argues that the requested information is protected from disclosure under §552.107(1) as "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct," including Rule 1.05, as well as §552.101, as "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Conclusion

For the reasons set forth in this letter, the City seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,



James Kopp
Assistant City Attorney

cc: Emilie Eaton, Express-News
Roland Smith

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W170246-053017

Date Submitted: 5/15/2017 8:00:00 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 5/30/2017 5:00:00 PM

Requestor:

Emilie Eaton

Express News

San Antonio, TX 78210

707-366-2248

Information Requested:

Describe the document(s) you are requesting: I realized today that it's been two weeks since the external review of the Marquise Jones case began. Has the law firm finished the report yet, and if so, can I have a copy? From: Eaton, Emilie Sent: Monday, May 15, 2017 2:13 PM Subject: [EXTERNAL] RE: Following up To: Thea Setterbo (GPA) Hey Thea, Hope you're doing well. Has the report been finalized?

Attachment 1A



City of San Antonio

Reference Number: W171082-060517

Date Submitted: 6/5/2017 1:54:49 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/19/2017 8:00:00 AM

Requestor:

Roland Smith

Information Requested:

Describe the document(s) you are requesting: Good Evening, Mayor Taylor, Four months ago, in March 2017, when speaking about the killing of Marquise Jones by San Antonio police officer Robert Encina, you said: "On Sunday evening, I learned that the City of San Antonio was amending its discovery response. It is disappointing whenever there is a lack of communication or transparency, especially with an officer-involved shooting. I'm expecting a quick and thorough review of this incident by city staff and the independent counsel, resulting in an equally thorough report to me and my Council colleagues. These developments underscore the importance of my having created the Council on Police-Community Relations in the first place, which has focused much of its efforts on the issue of greater transparency." Please share with us the results of the review by city staff and independent counsel that you ordered four months ago.

Attachment 1B

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

May 30, 2017

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

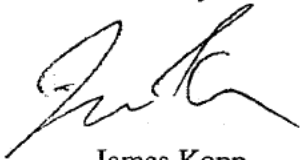
Re: Request for an Open Records Decision
Our File No.: W170246

Dear Sirs:

On May 15, 2017, the city of San Antonio received an open records request from Emilie Eaton. A copy of that request is enclosed. May 29, 2017, was a city holiday (Memorial Day), so city offices were closed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

cc: Emilie Eaton

Via E- Mail (without enclosures)

Attachment 2

CITY OF SAN ANTONIO

RECEIVED

JUN 26 2017

OPEN RECORDS DIVISION

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-8992 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

6/22/2017

669656
673355

Texas Attorney General's Office
Open Government Division
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

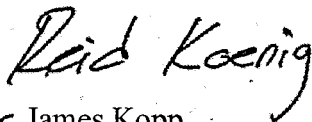
RE: Request for Open Records Ruling
COSA File No.: W171930

Dear Assistant Attorney General:

On 6/12/2017, the City of San Antonio received an open records request [**Attachment A**] from Roland Smith. The City seeks to withhold the requested information pursuant to the following sections of chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,



for James Kopp
Assistant City Attorney

cc:

Roland Smith
(Without Enclosures)

Attachment A



City of San Antonio

Reference Number: W171930-061217

Date Submitted: 6/12/2017 9:13:30 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/26/2017 8:00:00 AM

Requestor:

Roland Smith

Information Requested:

Describe the document(s) you are requesting: 1) All City of San Antonio records related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 2) All records of the investigation conducted by the San Antonio Police Department of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 3) All records generated or maintained by the City of San Antonio Mayor's Office related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 4) A list of the names and professional credentials of all external consultants or advisors used by the City of San Antonio for all issues related to the investigation. 5) All contracts for all external consultants or advisors used by the City of San Antonio for all issues related to the investigation. 6) A copy of all press releases prepared by the City of San Antonio related to the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.

Reid Koenig (City Attorney)

From: Ronald Smith
Sent: Monday, June 12, 2017 8:13 AM
To: Sarah Somerville (GPA)
Subject: [EXTERNAL] FW: Public Information Request, Marquise Jones Investigation

-----Original Message-----

From: Ronald Smith
Sent: Monday, June 12, 2017 8:11 AM
To: Moraima.Montenegro@sanantonio.gov
Subject: Public Information Request, Marquise Jones Investigation

Dear Ms. Montenegro,

In accordance with the Texas Public Information Act, this is a formal request for the following records:

- 1) All City of San Antonio records related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.
- 2) All records of the investigation conducted by the San Antonio Police Department of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.
- 3) All records generated or maintained by the City of San Antonio Mayor's Office related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.
- 4) A list of the names and professional credentials of all external consultants or advisors used by the City of San Antonio for all issues related to the investigation.
- 5) All contracts for all external consultants or advisors used by the City of San Antonio for all issues related to the investigation.
- 6) A copy of all press releases prepared by the City of San Antonio related to the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.

Sincerely,

Ronald Smith

(210) 725-7177 [text-capable]

CITY OF SAN ANTONIO

RECEIVED

JUN 26 2017

OPEN RECORDS DIVISION

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-8992 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

6/22/2017

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673355

Texas Attorney General's Office
Open Government Division
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

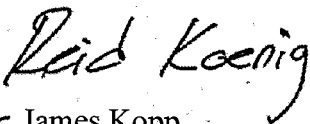
RE: Request for Open Records Ruling
COSA File No.: W171930

Dear Assistant Attorney General:

On 6/12/2017, the City of San Antonio received an open records request [Attachment A] from Roland Smith. The City seeks to withhold the requested information pursuant to the following sections of chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,



for James Kopp
Assistant City Attorney

cc:

Roland Smith
(Without Enclosures)

Attachment A



City of San Antonio

Reference Number: W171930-061217

Date Submitted: 6/12/2017 9:13:30 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/26/2017 8:00:00 AM

Requestor:

Roland Smith

--

Information Requested:

Describe the document(s) you are requesting: 1) All City of San Antonio records related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 2) All records of the investigation conducted by the San Antonio Police Department of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 3) All records generated or maintained by the City of San Antonio Mayor's Office related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 4) A list of the names and professional credentials of all external consultants or advisors used by the City of San Antonio for all issues related to the investigation. 5) All contracts for all external consultants or advisors used by the City of San Antonio for all issues related to the investigation. 6) A copy of all press releases prepared by the City of San Antonio related to the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.

Reid Koenig (City Attorney)

From: Ronald Smith
Sent: Monday, June 12, 2017 8:13 AM
To: Sarah Somerville (GPA)
Subject: [EXTERNAL] FW: Public Information Request, Marquise Jones Investigation

-----Original Message-----

From: Ronald Smith
Sent: Monday, June 12, 2017 8:11 AM
To: Moraima.Montenegro@sanantonio.gov
Subject: Public Information Request, Marquise Jones Investigation

Dear Ms. Montenegro,

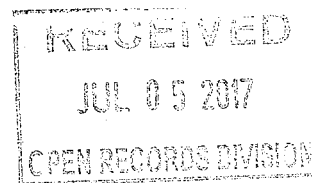
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Sincerely,

Ronald Smith

(210) 725-7177 [text-capable]



CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

July 30, 2017

669656
674409

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling
Requestor: Ronald Smith
Date request received: June 12, 2017
COSA File No. W171930

Dear Assistant Attorney General:

June 12, 2017, the City of San Antonio received a public information request from Ronald Smith, which requested information related to the investing of the shooting death of Marquise Jones [Attachment 1]. On June 22, 2017, the city sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [Attachment 2]. By this Request for a Ruling, the city now submits legal argument supporting the application of the exceptions claimed. As noted below, information to which the city objects to release have been previously submitted to the Attorney General's Office. Responsive records to which there is no objection will be released to requestor.

Item 1: City of San Antonio records related to the investigation

On June 5, 2017, Requestor submitted a request for the results of an investigation of an independent counsel hired by the city, COSA # W171082. This request was sent to the Attorney General's Office on June 6, 2017. This subsequent request arguably asks for this same report, so the city again objects to release. The information was sent to the Attorney General's Office under COSA Nos. W170246 and W171082, and is not again included herein, unless requested by the Attorney General's Office. The city repeats, in its entirety the arguments contained in the prior request, and would refer the Attorney General's Office to the attachments in the prior submission.

Background Information

An issue arose in a federal lawsuit in which the City of San Antonio was a party, related to the chain of custody and evidentiary testing of a handgun. The City sought legal advice, so First

Assistant City Attorney, Elizabeth Provencio, retained outside legal counsel on behalf of the City, Kyle Watson, to give legal advice on the chain of custody issues involving the handgun [Attachment 4 – Engagement Letter]. Kyle Watson is an attorney licensed to practice law in the State of Texas. As part of his legal services, Mr. Watson was “to conduct an independent fact investigation” as part of preparing his legal analysis [Attachment 4]. In response, Mr. Watson conducted an investigation and prepared a report [Attachment 3] that included his findings along with his legal opinions and legal analyses of the issues at hand. He further made recommendations in his report based upon those facts, legal opinions and legal analyses.

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(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

“A communication is ‘confidential’ if not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the information.” Tex. R. Evid. 503(b)(1).

The investigation report was a confidential communication, not intended to be disclosed to third persons, and prepared and provided to the City Attorney by its outside lawyer in furtherance of the rendition of professional legal services pursuant to the Letter of Engagement. The report has not been shared with anyone outside the City, and was only viewed by a few persons within the City who are lawyers with the City Attorney’s office, or

those City officials, who are clients of the City Attorney's Office, who have supervisory authority over the Police Department [**Attachment 5 – List of Individuals Referenced within Documents and their Relationship to the City**]. Tex. R. Evid. 503(c)(1) permits the client to claim the privilege. The City Attorney's office, as the client, asserts its right as a client to exempt the entire investigation report and information provided as part of the investigation as confidential attorney-client communications. See *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 333-334 (Tex. App.-Austin 2000, pet. denied) (holding that the attorney-client privilege applied to the entire investigative report where the school district sought legal advice). The City of San Antonio, as the client of the City Attorney's Office, likewise claims the privilege to prevent release of this information.

In *Paxton v. City of Dallas*, 509 S.W.3d 247, 267-68 (Tex. 2017), the Texas Supreme Court recognized the importance of attorney-client communications by holding: "the significant interests supporting withholding confidential and privileged attorney-client communications outweigh the competing interests supporting disclosure. We therefore conclude a 'compelling reason' to withhold confidential attorney-client communications exists and, absent waiver, rebuts the presumption that the information protected by the privilege is subject to required public disclosure."

In *Paxton*, the City of Dallas and the Attorney General's office agreed that "the PIA excepts attorney-client communications from public disclosure," but disagreed "about whether protection is afforded under the confidential-by-law exception or the attorney-client exception." *Paxton* at 253. The City therefore further argues that the requested information is protected from disclosure under §552.107(1) as "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct," including Rule 1.05, as well as §552.101, as "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

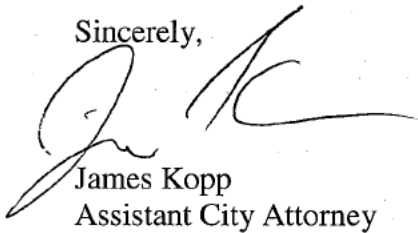
Item 2: SAPD investigation records of the investigation

These records were previously submitted to the Attorney General's Office by different requestors, and the Attorney General's Office ruled that the city can withhold these records OR2016-07421. A copy of the prior ruling will be submitted to requestor. The city has previously released some of the requested records with redactions, and these previously released records will be released to Requestor.

Conclusion

For the reasons set forth in this letter, the city seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,

A handwritten signature in black ink, appearing to be 'James Kopp', written over the printed name.

James Kopp
Assistant City Attorney

cc: Ronald Smith

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W171930-061217

Date Submitted: 6/12/2017 9:13:30 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/26/2017 8:00:00 AM

Requestor:

Ronald Smith

210-725-7177

Information Requested:

Describe the document(s) you are requesting: 1) All City of San Antonio records related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 2) All records of the investigation conducted by the San Antonio Police Department of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 3) All records generated or maintained by the City of San Antonio Mayor's Office related to the investigation of the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014. 4) A list of the names and professional credentials of all external consultants or advisors used by the City of San Antonio for all issues related to the investigation. 5) All contracts for all external consultants or advisors used by the City of San Antonio for all issues related to the investigation. 6) A copy of all press releases prepared by the City of San Antonio related to the shooting death of Marquise Jones by San Antonio police officer Robert Encina on February 28, 2014.

Attachment I

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-8992 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

6/22/2017

Texas Attorney General's Office

Open Government Division

P.O. Box 12548

Austin, Texas 78711-2548

Via First Class Mail

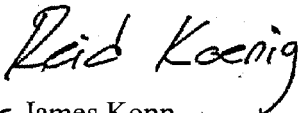
RE: Request for Open Records Ruling
COSA File No.: W171930

Dear Assistant Attorney General:

On 6/12/2017, the City of San Antonio received an open records request [Attachment A] from Roland Smith. The City seeks to withhold the requested information pursuant to the following sections of chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,



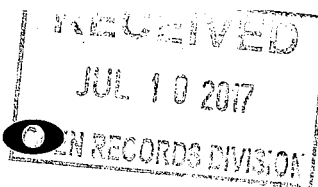
for James Kopp
Assistant City Attorney

cc:

Roland Smith
(Without Enclosures)

Attachment 2

CITY OF SAN ANTONIO



OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-8992 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

7/5/2017

669656
675228

Texas Attorney General's Office
Open Government Division
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

RE: Request for Open Records Ruling
COSA File No.: W172895

Dear Assistant Attorney General:

On 6/19/2017, after business hours, the City of San Antonio received an open records request [Attachment A] from Dillon Collier. The City seeks to withhold the requested information pursuant to the following sections of chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

For purposes of determining the timeliness of this request for a decision from your office, please be aware that the City was closed for business on the following days: 7/4/2017

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

James Kopp
Assistant City Attorney

cc:

Dillon Collier
(Without Enclosures)



City of San Antonio

Reference Number: W172895-061917

Date Submitted: 6/19/2017 9:05:16 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 7/5/2017 8:00:00 AM

Requestor:

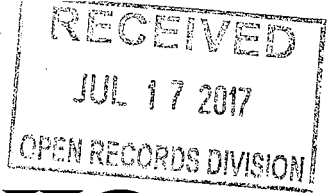
Dillon Collier

KSAT

810-908-3940

Information Requested:

Describe the document(s) you are requesting: Please provide a copy of the March 2017 outside review conducted on the internal investigation of the Marquise Jones shooting.



CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

July 12, 2017

669656
676101

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling

| Requestor: | Date request received: | COSA File No.: |
|-------------------|-------------------------------|-----------------------|
| Dillon Collier | June 19, 2017 | W172895 |
| Ximena Alvarez | July 10, 2017 | W175507 |
| Ximena Alvarez | July 11, 2017 | W175613 |

Dear Assistant Attorney General:

On the above listed dates, the City of San Antonio received public information requests from the above listed requestors, which requested a report prepared by the City's attorney hired to conduct a review and provide legal analysis [Attachment 1]. July 4, 2017, was a city holiday (Independence Day), so city offices were closed. For request number W172895, the city sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [Attachment 2].

This same information was previously requested under COSA Nos. W170246 and W171082, which was sent to the Attorney General's Office for a ruling on June 6, 2017. It was also requested under COSA No. W171930, which was sent to the Attorney General's Office for a ruling on June 30, 2017. The requested information was sent to the Attorney General's Office under COSA Nos. W170246 and W171082, and is not again included herein, unless requested by the Attorney General's Office. The city repeats, in its entirety the arguments contained in the prior request, and would refer the Attorney General's Office to the attachments in the prior submission. However, subsequent to these prior Requests for Ruling, the city has released to all requestor's a redacted copy of the report, in which only the legal analysis has been redacted [Attachment 3]. For the instant requests, and for all prior requests for this information, based upon the release of a copy of the report in which the legal analysis portion has been redacted, the city now argues only that the legal analysis portion of the report is protected from disclosure.

Background Information

An issue arose in a federal lawsuit in which the City of San Antonio was a party, related to the chain of custody and evidentiary testing of a handgun. The City sought legal advice, so First Assistant City Attorney, Elizabeth Provencio, retained outside legal counsel on behalf of the City, Kyle Watson, to give legal advice on the chain of custody issues involving the handgun [Attachment 4 – Engagement Letter]. Kyle Watson is an attorney licensed to practice law in the State of Texas. As part of his legal services, Mr. Watson was “to conduct an independent fact investigation” as part of preparing his legal analysis [Attachment 4]. In response, Mr. Watson conducted an investigation and prepared a report [Attachment 3] that included his findings along with his legal opinions and legal analyses of the issues at hand. He further made recommendations in his report based upon those facts, legal opinions and legal analyses.

Arguments and Authorities

The Attorney General’s Office established the framework for consideration of legal issues related to the attorney-client privilege in ORD No. 676 (2002). The principles enunciated in this ORD are still in place, as evidenced by a decision submitted to the city in February, 2017, OR2017-03785.

Public Information Act §552.022 provides an exception to disclosure for information made confidential under “other law.” The Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of §552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Texas Rule of Evidence 503 provides:

(b) Rules of Privilege.

(1) *General Rule*. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

“A communication is ‘confidential’ if not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the information.” Tex. R. Evid. 503(b)(1).

The investigation report was a confidential communication, not intended to be disclosed to third persons, and prepared and provided to the City Attorney by its outside lawyer in furtherance of the rendition of professional legal services pursuant to the Letter of Engagement. Except as noted above for the portion of the report that does not include the legal analysis [Attachment 3], the legal analysis portion of the report has not been shared with anyone outside the City, and was only viewed by a few persons within the City who are lawyers with the City Attorney's office, or those City officials, who are clients of the City Attorney's Office, who have supervisory authority over the Police Department [**Attachment 5 – List of Individuals Referenced within Documents and their Relationship to the City**]. Tex. R. Evid. 503(c)(1) permits the client to claim the privilege. The City Attorney's office, as the client, asserts its right as a client to exempt the entire investigation report and information provided as part of the investigation as confidential attorney-client communications. See *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 333-334 (Tex. App.-Austin 2000, pet. denied) (holding that the attorney-client privilege applied to the entire investigative report where the school district sought legal advice). The City of San Antonio, as the client of the City Attorney's Office, likewise claims the privilege to prevent release of this information.

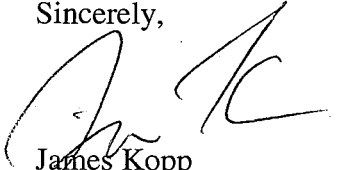
In *Paxton v. City of Dallas*, 509 S.W.3d 247, 267-68 (Tex. 2017), the Texas Supreme Court recognized the importance of attorney-client communications by holding: "the significant interests supporting withholding confidential and privileged attorney-client communications outweigh the competing interests supporting disclosure. We therefore conclude a 'compelling reason' to withhold confidential attorney-client communications exists and, absent waiver, rebuts the presumption that the information protected by the privilege is subject to required public disclosure."

In *Paxton*, the City of Dallas and the Attorney General's office agreed that "the PIA excepts attorney-client communications from public disclosure," but disagreed "about whether protection is afforded under the confidential-by-law exception or the attorney-client exception." *Paxton* at 253. The City therefore further argues that the requested information is protected from disclosure under §552.107(1) as "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct," including Rule 1.05, as well as §552.101, as "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Conclusion

For the reasons set forth in this letter, the City seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,



James Kopp
Assistant City Attorney

cc: All Requestors (the instant and prior requests) **Via E- Mail (without enclosures)**



City of San Antonio

Reference Number: W172895-061917

Date Submitted: 6/19/2017 9:05:16 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 7/5/2017 8:00:00 AM

Requestor:

Dillon Collier

KSAT

810-908-3940

Information Requested:

Describe the document(s) you are requesting: Please provide a copy of the March 2017 outside review conducted on the internal investigation of the Marquise Jones shooting.

Attachment 1



City of San Antonio

Reference Number: W175507-071017

Date Submitted: 7/10/2017 1:44:53 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 7/24/2017 8:00:00 AM

Requestor:

Ximena Alvarez

KENS 5

3222 Howard 1001W

San Antonio, TX 78212

210-823-6174

Information Requested: Other

Describe the document(s) you are requesting: To Whom This May Concern,, This is an open record request. KENS 5 is requesting the legal analysis that was redacted and released by the city of San Antonio Monday, July 10, 2017 regarding how police detectives handled the 2014 officer-involved shooting of Marquise Jones. Regards, Ximena V. Alvarez Research Specialist | 5400 Fredericksburg Road, San Antonio, Texas 78229 | twitter: @xalvarez06 | P. 210.366.5001 | F. 210.366.2716 | C. 210.559.6957 | kens5.com



City of San Antonio

Reference Number: W175613-071117

Date Submitted: 7/11/2017 11:28:18 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 7/25/2017 8:00:00 AM

Requestor:

Ximena Alvarez

KENS 5

3222 Howard 1001W

San Antonio, TX 78212

210-823-6174

Information Requested: Other

Describe the document(s) you are requesting: This is an Open Record request. KENS 5 is requesting the independent review and legal analysis of evidence testing on handgun found at scene in the matter of Cheryl Jones ET AL V. The City of San Antonio ET. AL., cause NO. 5:14-CV-328, in the United States District Court , Western District of Texas , San Antonio Division please. Regards, Ximena V. Alvarez Research Specialist | 5400 Fredericksburg Road, San Antonio, Texas 78229 | twitter: @xalvarez06 | P. 210.366.5001 | F. 210.366.2716 | C. 210.559.6957 | kens5.com

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

PHONE NO: (210) 207-8992 / FAX NO: (210) 207-6373

EMAIL: james.kopp@sanantonio.gov

Public Safety Headquarters

315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

7/5/2017

Texas Attorney General's Office

Open Government Division

P.O. Box 12548

Austin, Texas 78711-2548

Via First Class Mail

RE: Request for Open Records Ruling
COSA File No.: W172895

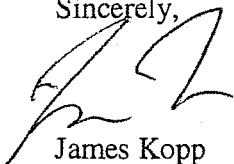
Dear Assistant Attorney General:

On 6/19/2017, after business hours, the City of San Antonio received an open records request [Attachment A] from Dillon Collier. The City seeks to withhold the requested information pursuant to the following sections of chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

For purposes of determining the timeliness of this request for a decision from your office, please be aware that the City was closed for business on the following days: 7/4/2017

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions or need any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,



James Kopp
Assistant City Attorney

cc:

Dillon Collier
(Without Enclosures)

Attachment 2

BROWN & HOFMEISTER, L.L.P.

740 East Campbell Road
Suite 800
Richardson, Texas 75081

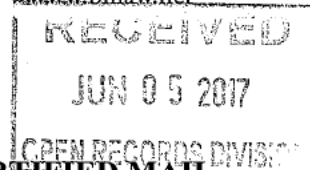
L. BRIAN NARVAEZ
(214) 747-6100
bnarvaez@bhlaw.net

Telephone: (214) 747-6100
Telecopier: (214) 747-6111
www.bhlaw.net

June 2, 2017

Honorable Ken Paxton
Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7014 2120 0001 5532 8072



Re: Public Information Request from Chris Grollnek received by the City of McKinney on May 18, 2017 (McKinney ID No. G004089-051817)

Dear General Paxton:

I represent the City of McKinney, Texas (the "City") regarding the above-referenced matter. Enclosed and marked as **Exhibit A** is a request for information from Mr. Chris Grollnek received by the City on May 18, 2017. Please note the City's offices were closed on Monday, May 29, in observance of Memorial Day.

The City believes that the responsive information is excepted from disclosure under the Public Information Act (the "Act"). The City anticipates that several discretionary and/or mandatory exceptions apply to the information that is responsive to the request. At this time, the City invokes all of the exceptions provided by, and the exceptions incorporated into Sections 552.101 through 552.156 of the Act. See TEX. GOV'T CODE §§ 552.101 – 552.156.

The requestor has been notified by copy of this letter that the City is seeking a determination regarding whether the responsive information is excepted from disclosure. Not later than the 15th business day after receipt of the request, the City will supplement this letter with either the requested information or a representative sample of the requested information, as well as comments as to the applicability of the exceptions raised herein. Please do not hesitate to contact me should you have any questions or comments.

Sincerely,

L. Brian Narvaez

LBN/ss
Enclosures

cc (w/ enclosures):

Heather Moody, Police Records Supervisor
Dee Williams, Police Records
Chris Grollnek, Requestor *via e-mail*:

Brian Narvaez

Subject:

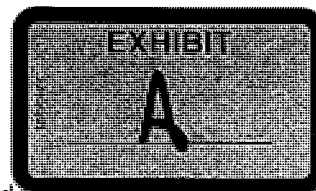
FW: Notification: G004089-051817 - New General Public Information Request Received

From: McKinney Public Information Center [mailto:mckinneytx@mycusthelp.net]

Sent: Thursday, May 18, 2017 12:32 PM

To: Sonya Paul <spaul@mckinneytexas.org>

Subject: Notification: G004089-051817 - New General Public Information Request Received



This is notification the system received a new General Public Information Request or a request has been reassigned to you. Below is the link to the specific request.

<https://mycusthelpadmin.com/MCKINNEYTX/Zadmin/ServiceRequests/Details.aspx?id=4089>

Overview of the Request

Create Date: 5/18/2017 12:30:36 PM

Reference # G004089-051817 - General Public Information Request

Description of Record Requested: *The after action report from the City Managers office from the police department AND the Fire Department from the incident at the McKinney Police Department on the range of dates: August 15, 2010 through Aug 17, 2010 when a man came and lit his truck on fire and started shooting the front of the police department. I am seeking the complete records since the disposition is adjudicated. This includes, the after action report, the audio files from all radio traffic in that time frame of the day from when the incident started at the time of the fire to the final entry at the house in Anna, TX when I as point man made entry. I want ALL SWAT after action reports, radio traffic, reports, supplements, award submissions, awards rewarded, recipients citations, digital photos of entire crime scene memorialized, evidence lists and disposition sheets, and finally, the POWER POINT that the Chief at the time and Randy Roland assembled and traveled around presenting funded by the city of McKinney. I want the complete report and after action report of the critical incident of the active shooter at 2200 Taylor Burk Dr from the fire department, the police department and the city manager and council. This should NOT be limited to any one rest as its et al at its face.*

This is an auto-generated email and has originated from an unmonitored email account. Please DO NOT REPLY.

The material in this e-mail is intended only for the use of the individual to whom it is addressed and may contain information that is confidential, privileged, and exempt from disclosure under applicable law. If you are not the intended recipient, be advised that the unauthorized review, use, disclosure, duplication, distribution, or the taking of any action in reliance on this information is strictly prohibited. If you have received this e-mail in error, please notify the sender by return email and destroy all electronic and paper copies of the original message and any attachments immediately. Please note that neither City of McKinney nor the sender accepts any responsibility for viruses and it is your responsibility to scan attachments (if any). Thank You.

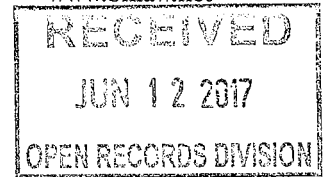
BROWN & HOFMEISTER, L.L.P.

740 East Campbell Road
Suite 800
Richardson, Texas 75081

L. BRIAN NARVAEZ
(214) 747-6100
bnarvaez@bhlaw.net

Telephone: (214) 747-6100
Telecopier: (214) 747-6111
www.bhlaw.net

June 9, 2017



Honorable Ken Paxton
Attorney General
P.O. Box 12548
Austin, TX 78711-2548

VIA CERTIFIED MAIL 669946
RETURN RECEIPT REQUESTED 671025
7014 2120 0001 5532 8287

Re: Public Information Request from Christopher Grollnek received by the
City of McKinney on May 18, 2017
McKinney ID No. G004089-051817

Dear Attorney General Paxton:

I represent the City of McKinney, Texas (the "City"), regarding the above-referenced matter. Enclosed and marked as **Exhibit A** is a public information request from Mr. Christopher Grollnek received by the City on May 18, 2017. This letter supplements correspondence sent by our office dated May 25, 2017. In addition, please note the City's offices were closed on Monday, May 29, in observance of Memorial Day.

The City is releasing a portion of the requested information. Pursuant to Section 552.301 of the Public Information Act (the "Act"), the City requests a determination regarding whether the submitted responsive information falls within a discretionary or mandatory exception to disclosure. In particular, the City believes the submitted responsive information (i) must be withheld under Section 552.101 of the Act in conjunction with Section 418.181 of the Homeland Security Act ("HSA") and (ii) may be withheld under Section 552.108 of the Act. A copy of the submitted responsive information is attached as **Exhibits B & B-1**.

Section 552.101 of the Act in Conjunction with Section 418.181 of the HSA:
Confidentiality of Certain Information Relating to Critical Infrastructure

The City believes the submitted responsive information, marked as **Exhibits B & B-1**, must be withheld under Section 552.101 of the Act in conjunction with Section 418.181 of the HSA. Section 552.101 of the Act specifically excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision. TEX. GOV'T CODE § 552.101. This exception encompasses information made confidential by other statutes, including Section 418.181 of the HSA. Section 418.181 of the HSA provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

TEX. GOV'T CODE § 418.181. The Government Code defines critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation." TEX. GOV'T CODE § 421.001. Your Office has concluded that the fact that information may pertain to public or private infrastructure does not make the information *per se* confidential under the HSA.

The submitted responsive information, marked as **Exhibits B & B-1**, relates to the City's Public Safety Building. The Public Safety Building is critical infrastructure for purposes of Section 418.181 of the HSA. Although the submitted responsive information, marked as **Exhibit B**, relates to a closed criminal investigation conducted by the Texas Rangers, the investigation includes details of particular vulnerabilities of the City's Public Safety Building that, if released, would reveal the technical details of particular vulnerabilities of the Public Safety Building to an act of terrorism. These details are intertwined with the investigation. This analysis is intertwined with the investigation. In addition, the submitted responsive information, marked as **Exhibit B-1**, relates to an internal investigation into the technical details of particular vulnerabilities of the Public Safety Building to an act of terrorism. Accordingly, the City seeks to withhold the submitted responsive information, marked as **Exhibits B & B-1**, under Section 552.101 of the Act in conjunction with Section 418.181 of the HSA.

Section 552.108: The Law Enforcement Safety Exception

The City seeks to withhold the submitted responsive information, marked as **Exhibits B & B-1**, under Section 552.108 of the Act. Section 552.108 also excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *See id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming Section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* GOV'T CODE §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). Your office has concluded § 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The submitted responsive information, marked as **Exhibits B & B-1**, if released, would jeopardize officer safety. Although the submitted responsive information, marked as **Exhibit B**, relates to a closed criminal investigation conducted by the Texas Rangers, the investigation includes details of particular vulnerabilities of the City's Public Safety Building that, if released, could be used to compromise the security of officers. These details are intertwined with the investigation. In addition, the submitted responsive information, marked as **Exhibit B-1**, relates to an internal investigation into the vulnerabilities of the Public Safety Building that could be used to compromise the security of officers. Accordingly, the City seeks to withhold the submitted responsive information, marked as **Exhibits B & B-1**, under section 552.108(b)(1) of the Act.

Section 552.108: The Law Enforcement Exception

The City seeks to withhold the submitted responsive information, marked as **Exhibit B**, under Section 552.108 of the Act. Section 552.108 of the Act, commonly referred to as the "Law Enforcement Exception," generally applies to records created by an agency that investigates crimes and enforces criminal laws. The Law Enforcement Exception consists of two parts. The first part of the Law Enforcement Exception provides that information held by a law enforcement agency is excepted from required public disclosure if its release "would interfere with the detection, investigation, or prosecution of crime[.]" TEX. GOV'T CODE § 552.108(a)(1). The second part of the Law Enforcement Exception excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(a)(2). Thus, the second part of the Law Enforcement Exception is applicable only if the information at issue relates to a criminal case that did not result in a conviction or a deferred adjudication. To withhold information from required disclosure under the Law Enforcement Exception, a governmental body must reasonably explain how and why Section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). Basic information about an arrested person, an arrest, or a crime may not be withheld under either part of the Law Enforcement Exception. *Id.* § 552.108(c).

The submitted responsive information, marked as **Exhibit B**, relates to a closed criminal investigation into an active shooter incident at the City's Public Safety Building. The investigation was conducted by the Texas Rangers, but did not result in a conviction or deferred adjudication due to the alleged suspect having committed suicide. Therefore, the responsive information deals with the detection and investigation of a crime related to a completed investigation that did not result in conviction or deferred adjudication. Accordingly, the City seeks to withhold the responsive information, other than basic information, under Section 552.108(a)(2) of the Act.


As authorized by and in accordance with Section 552.130 of the Act, the City will withhold motor vehicle information from any information that must be released.

The requestor has been notified by copy of this letter that the City is seeking a determination regarding whether the responsive documents fall within an exception to disclosure. Please do not hesitate to contact me should you have any questions or comments.

June 9, 2017

Page 4

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Brian Narvaez', with a stylized, flowing script.

L. Brian Narvaez

LBN/ss

Enclosures

cc (w/ enclosures):

Heather Moody, Police Records Supervisor

Dee Williams, Police Records

Sonya Paul, Records and Information Coordinator

cc (w/o enclosures):

Christopher Grollnek, Requestor

Heather Moody

On #6004089

From: Sonya Paul
Sent: Thursday, May 18, 2017 4:10 PM
To: ; Brian Narvaez
Cc: Heather Moody; Michael Edwards
Subject: FW: Notification: G004089-051817 - New General Public Information Request Received
Categories: OPEN RECORDS

David/Brian,

I assigned this request to the City Attorney office due to the sensitive nature of Mr. Grollnek previous requests.

Sonya

From: McKinney Public Information Center [mailto:mckinneytx@mycusthelp.net]
Sent: Thursday, May 18, 2017 12:32 PM
To: Sonya Paul <spaul@mckinneytexas.org>
Subject: Notification: G004089-051817 - New General Public Information Request Received



This is notification the system received a new General Public Information Request or a request has been reassigned to you. Below is the link to the specific request.

<https://mycusthelpadmin.com/MCKINNEYTX/Zadmin/ServiceRequests/Details.aspx?id=4089>

Overview of the Request

Create Date: 5/18/2017 12:30:36 PM

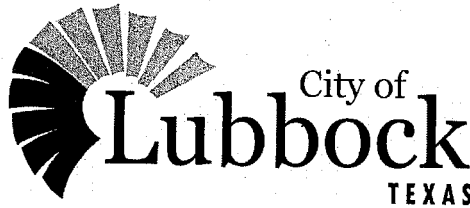
Reference # G004089-051817 - General Public Information Request

Description of Record Requested: *The after action report from the City Managers office from the police department AND the Fire Department from the incident at the McKinney Police Department on the range of dates: August 15, 2010 through Aug 17, 2010 when a man came and lit his truck on fire and started shooting the front of the police department. I am seeking the complete records since the disposition is adjudicated. This includes, the after action report, the audio files from all radio traffic in that time frame of the day from when the incident started at the time of the fire to the final entry at the house in Anna, TX when I as point man made entry. I want ALL SWAT after action reports, radio traffic, reports, supplements, award submissions, awards rewarded, recipients citations, digital photos of entire crime scene memorialized, evidence lists and disposition sheets, and finally, the POWER POINT that the Chief at the time and Randy Roland assembled and traveled around presenting funded by the city of McKinney. I want the complete report and after action report of the critical incident of the active shooter at 2200 Taylor Burk Dr from the fire department, the police department and the city manager and council. This should NOT be limited to any one rest as its et al at its face.*

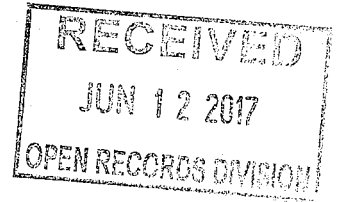
This is an auto-generated email and has originated from an unmonitored email account. Please DO NOT REPLY.

EXHIBITS B & B-1

The City seeks to withhold the submitted responsive information, marked as **Exhibits B & B-1**, because it relates to the City's Public Safety Building in relation to a closed investigation into an active shooter incident that occurred at the Public Safety Building. As explained in the letter, the City believes the release of the submitted responsive information would reveal technical details of particular vulnerabilities of the Public Safety Building to an act of terrorism and jeopardize officer safety. The City's concerns are heightened by the fact that the requestor is a former officer for the City who believes he was unfairly terminated after being injured on duty and that he is still being targeted and harassed by the City. Although the City is not permitted under the Public Information Act to ask the requestor about his objectives for requesting the submitted responsive information, the City fears that releasing it may provide the requestor with details of particular vulnerabilities that he could abuse or exploit to the detriment of its public safety personnel.



Office of the City Attorney



OR-671546-17
671546

June 9, 2017

Via CMRRR: 7012 3460 0001 9049 8321

Honorable Ken Paxton
Attorney General
Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Decision Request (Our File No. 1608)

Dear Mr. Paxton:

The City of Lubbock (the "City") is requesting an Open Records Decision from your office as it has received a request on May 30, 2017, for certain information pertaining to a police case. A copy of the request is attached hereto as **Exhibit A**.

The City is requesting a decision from your office pursuant to Chapter 552 of the Texas Government Act, also known as the Public Information Act (the "Act") as the requested information may be confidential.

The City is raising the following exceptions in its request:

Section 552.101 (exception for information considered to be confidential by law);

Section 552.103 (exception relating to litigation, reasonably anticipated litigation or settlement negotiations); and

Section 552.108 (certain law enforcement and prosecutorial information).

Section 552.108

The City asserts that the requested information is confidential pursuant to the terms of Section 552.108 of the Act. A copy of the information that may be confidential pursuant to Section 552.108(a)(2) is attached hereto as **Exhibit B-1**. Section 552.108(a)(2) of the Act excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, the information should remain confidential. Please see also OR2000-1930, OR2000-1872, OR99-2747, and OR99-2398.

However, the information within **Exhibit B-2** involves an ongoing police investigation. Texas Gov't Code §552.108(a)(1). Therefore, the City also asserts that this information is confidential pursuant to the terms of Section 552.108 of the Act. This section excepts from disclosure "information held by a law enforcement agency...that deals with the detection, investigation, or prosecution of crime" if the "release ...would interfere with the detection, investigation, or prosecution of crime." *See Section 552.108(a)(1) of the Act.*

In this case, the requested information contains evidence in a pending police investigation. Release of this information could hurt the investigation of this case. The requested information should remain confidential while this case is still under police investigation and being reviewed for potential criminal prosecution. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975).

Section 552.101 and 552.108

The information contained within **Exhibit C** is confidential pursuant to the provisions of Section 552.101 and Section 552.108 of the Act. This information is confidential because it relates to the "g file" of police officer(s). The g file is the internal personnel file of a police officer that is maintained in accordance with Section 143.089(g) of the Texas Local Government Code. This provision states that the City "may not release any information contained in the department file to any agency or person requesting information relating to a ... police officer." The information in the g file is a category of information that is not available for public inspection. *City of San Antonio v. Texas Att'y General*, 851 S.W.2d 946 (Tex. App.—Austin 1993). *See also* Open Records Decision No. 650 (1996).

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to investigations of police officers for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, No.04-99-00848-CV, 2000 WL 1918877 (Tex. App.—San Antonio, Dec. 20, 2000, no pet. h.) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.089(g) is confidential).

The information contained in **Exhibit C** is all information that is located within the g file of police officer(s). This information includes internal investigations and contains all items solely for the police department's use, is reasonably related to the officers' employment relationship with the department, and is maintained in the department's internal file. The information is made specifically confidential pursuant to your office's decision in Texas Attorney General Decision No. JC-0257 (2000).

Section 552.103 (exception relating to litigation, reasonably anticipated litigation or settlement negotiations)

The City further believes that Section 552.103 of the Act applies to except all of the requested materials from disclosure (*see Exhibits B-1, Exhibit B-2, Exhibit C and Exhibit D*). This exception excludes matters relating to existing and anticipated litigation. *See* Open Records Decision No. 574 (1990). In the case at issue, the requested documents relate directly to a claim letter received by the City (*see Exhibit D*). This claim conforms to the notice requirements of the Texas Tort Claims Act, Civil Practice and Remedies Code, Chapter 101 and with the City's Charter.

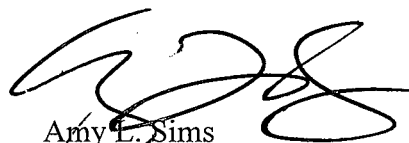
The courts and your office have developed a two-prong test to identify if materials are exempted under this Section. *See Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). A governmental entity must show: (1) the litigation is pending or reasonably anticipated and (2) the information relates to that litigation.

The first issue, that the litigation is reasonably anticipated, is met because the City has received a claim letter from the Requestor for the alleged incident that relates to the requested material (*see Exhibit D*). *See* Open Records Decision No. 638 (1996).

All of the materials included in this request relate directly to the litigation matters as they involve the issues related to the claim letter (*see Exhibit B-2, Exhibit C and Exhibit D*). The information consists of factual information obtained and created by the City in its police documents that relate directly to the basis of the filed claim. Because this information relates to the claim and the potential lawsuit, the proper method to procure this information is through the discovery process afforded in a litigation setting. The City, further, has not disclosed this information to any outside third parties.

Thank you very much for your consideration of these matters. Please do not hesitate to call or write if you need further information in regard to this request for a decision.

Yours truly,


Amy L. Sims
Deputy City Attorney

ALS:dm
Enclosures (Exhibits A, B-1, B-2, C and D)

cc: (w/o Encl.)

Via CMRRR: 7012 3460 0001 9049 8338

Mehr Singh, ATTORNEY AT LAW
1212 Texas Avenue
Lubbock, Texas 79401

EXHIBIT A

MEHR SINGH
ATTORNEY AT LAW

City of Lubbock
Attn. Chad Weaver, City Attorney
P.O. Box 2000
Lubbock, Texas 79457

RECEIVED

MAY 30 2017

CITY ATTORNEY

CERTIFIED MAIL: 7003 1010 0003 9276 3019

Re: Texas Public Information Act Request
Jimmy Livingston /Date of Incident - 03-17-2017/ Lubbock, Texas

RECEIVED

MAY 30 2017

LPD RECORDS

Dear Mr. Weaver

This is a request under the Texas Public Information Act.

I request that a copy of the following information be provided to me:

The use of the term officer refers to an officer of the Lubbock Police Department.

1. The complete investigation file regarding the internal affairs investigation of the in custody death of Jimmy Livingston.
2. The personnel file of all officers who participated in any manner in the stop, detention and arrest of Jimmy Livingston on March 17, 2017.
3. All written reports prepared by all officers who participated in any manner in the stop, detention and arrest of Jimmy Livingston on March 17, 2017.
4. All dash cam and body cam video of any officer involved in the stop, detention and arrest of Jimmy Livingston on March 17, 2017.
5. All witness statements of any witnesses who witnessed the stop, detention and arrest of Jimmy Livingston on March 17, 2017.
6. The complete dispatch radio call records and recordings of the stop, detention and arrest of Jimmy Livingston on March 17, 2017.

17-8272
17-8259

MEHR SINGH

ATTORNEY AT LAW

I am the attorney representing Mr. Livingston's heir and will be responsible for all fees associated with this request.

Please call me if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to be 'MS' followed by a stylized flourish.

Mehr Singh



Office of the City Attorney

June 9, 2017

Via CMRRR: 7012 3460 0001 9049 8338

Mehr Singh
ATTORNEY AT LAW
1212 Texas Avenue
Lubbock, Texas 79401

Re: Open Records Request (Our File No. 1608)

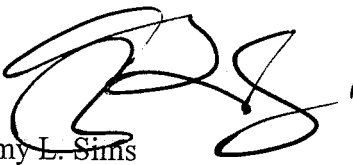
Dear Mr. Singh:

The City of Lubbock (the "City") has received your request for information related to a police case. As some of this information may be confidential, the City has written to the Texas Attorney General, a copy of which letter is enclosed. If you wish to submit an opinion as to this matter, you may write to the Attorney General at the following address:

Honorable Ken Paxton
Attorney General
Opinion Committee
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

Thank you.

Sincerely,


Amy L. Sims
Deputy City Attorney

ALS:dm

cc:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

EXHIBIT D

Claim # 17-C-155

RECEIVED

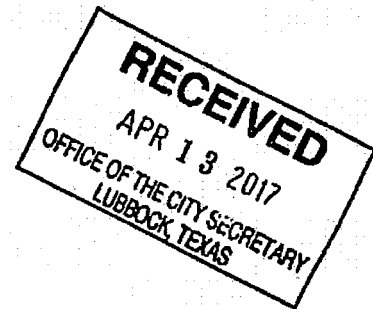
APR 13 2017

CITY ATTORNEY

MEHR SINGH
ATTORNEY AT LAW

CMRRR

Mr. Chad Weaver
City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457-2000
Sent Via Certified Mail: 7003 1010 0003 9276 2968



Re: Adriana Livingston v. The City of Lubbock

Dear Mr. Weaver,

I represent Adriana Livingston, the sole heir of James E. Livingston. This letter is written pursuant to Rule 408 of the Federal Rules of Evidence and is intended as an offer of compromise of Mr. Livingston's claim against the City of Lubbock and its employees for damages sustained by Adriana Livingston as a result of his death. This letter is also written pursuant to the requirements of the Texas Tort Claims Act and is intended to give the City of Lubbock and its employee's notice of Ms. Livingston's claim for personal injury damages.

The specifics of this claim are that Mr. Livingston was arrested for the offense of Driving While Intoxicated. The arrest occurred on the evening of March 17, 2017 in Lubbock, Lubbock County, Texas. Mr. Livingston was transported in custody to the University Medical Center where he was requested to provide a sample of his blood. Mr. Livingston refused to provide a sample of his blood and the arresting officer proceeded to request a warrant to require Mr. Livingston to submit a sample of his blood.

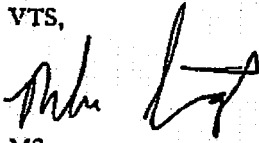
While awaiting the warrant, the arresting officer placed Mr. Livingston in a detention cell and removed his handcuffs. He then left Mr. Livingston unattended and unsupervised for an unknown length of time. Mr. Livingston removed his belt and hung himself with the belt. By the time he was discovered, Mr. Livingston was brain dead and was removed from life support on March 20, 2017.

M E H R S I N G H
A T T O R N E Y A T L A W

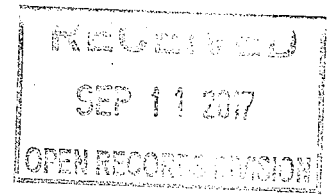
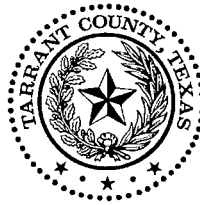
Ms. Livingston intends to pursue a claim against the officer involved for violation of Mr. Livingston's 14th Amendment right to be free of cruel and unusual punishment. Ms. Livingston will also pursue a claim in accordance with the waivers provided in the Texas Tort Claims Act regarding the use of the handcuffs owned by the officer and City of Lubbock. The use of the handcuffs was the direct cause of Mr. Livingston being able to hang himself and was the direct cause of his death. The second purpose of this letter is to attempt to settle this matter without the necessity of litigation.

I am authorized by Ms. Livingston to agree to settle this matter without the necessity of litigation for the sum of \$250,000. This offer shall remain open for 21 days from the date of this letter. If not accepted on or before that date, it will automatically expire and suit be filed.

VTs,



MS



SHAREN WILSON

Criminal District Attorney
Tarrant County

AP-683998-17
683998

September 7, 2017

Honorable Ken Paxton
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

E-C.M./R.R.R.-Ship Request # 014203

Re: Public Information Request from Daryl Washington

Dear General Paxton:

On August 25, 2017, the Tarrant County Criminal District Attorney's Office ("Office") received a public information request from Daryl Washington requesting the following documents related to a specific investigation: "a true, unredacted, and complete copy of the Offense Report; Accident photos; 911 Call Sheet; 911 tapes and recordings; Investigative file; documents used, reviewed, and furnished during the investigation[. . .] any and all supporting documents, police reports, written statements, transcribed statements, videotapes, audiotapes, photographs, coroner documents, forensic evidence, and investigative reports related to the matter." See copy of request, attached as Exhibit A. Please note that the date of receipt is reflected in the "Sent" row of the e-mail header of the original message.

This Office believes that the information sought by the Requestor may be withheld under Sections 552.101, 552.108, and 552.111 of the TEXAS GOVERNMENT CODE.

I. The requested information relates to a criminal investigation and prosecution that did not result in a conviction or deferred adjudication and may be withheld under Section 552.108 of the TEXAS GOVERNMENT CODE

This Office seeks to withhold the information sought pursuant to Sections 552.108(a)(2) & (b)(2) of the TEXAS GOVERNMENT CODE. Specifically, Section 552.108(a)(2) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime is excepted from required public disclosure if it is information that "deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Similarly, Section 552.108(b)(2) states that an internal record or notation of a law enforcement agency or prosecutor is excepted from public disclosure if "the internal

record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication.”

In this case, the requested information pertains to a criminal investigation that resulted in a vote to take no criminal action by the Tarrant County Grand Jury. *See* Notice of Grand Jury Vote and Case Closure, attached as Exhibit B. Since the requested documents deal with an investigation and prosecution that did not result in a conviction or deferred adjudication, this Office seeks to withhold the responsive documents in their entirety under Section 552.108 of the TEXAS GOVERNMENT CODE.

II. The Requestor is seeking the State’s entire litigation file, which is excepted from disclosure as core work product under Section 552.111 of the Texas GOVERNMENT CODE

In the present request, the Requestor specifies that he is seeking numerous documents, including the “Investigative file; documents used, reviewed, and furnished during the investigation,” including “any and all supporting documents, police reports, written statements, transcribed statements, videotapes, audiotapes, photographs, coroner documents, forensic evidence, and investigative reports related to the matter.” *See* copy of request, attached as Exhibit A. Based on the expansive language of the request, the Requestor is seeking the State’s entire litigation file. This Office asserts that the requested documents are exempt from release under Section 552.111, which incorporates the attorney work product privilege.

Section 552.111 provides that “[A]n interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.” The Office of the Attorney General has previously concluded that Section 552.11 incorporate the privilege for work product found in Rule 192.5 of the TEXAS RULES OF CIVIL PROCEDURE. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677, at 4-8 (2002). Specifically, Rule 192.5 defines “work product” as:

- (1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.

When a requestor seeks a governmental body’s entire litigation file, the governmental body may assert that the file is excepted from disclosure in its entirety because such a

request implicates the core work product aspect of the attorney work product privilege. *See* Open Records Decision No. 677, at 5-6 (2002). In this request, the file sought by the Requestor was created in anticipation of criminal litigation, which resulted in a vote to take no action by the grand jury. *See* Notice of Grand Jury No-Bill Vote, attached as Exhibit B. Because the organization and decision of what to include in the state's file necessarily reveals the attorney's thought processes, this Office seeks to withhold the entirety of the State's litigation file under the attorney work product privilege incorporated into Section 552.111.

III. The responsive documents include material prepared by an attorney representing the State in anticipation of criminal litigation, which is excepted from disclosure under the attorney work product privilege incorporated into Section 552.111 of the GOVERNMENT CODE

Alternatively, should the Office the Attorney General conclude that the State's file may not be held within its entirety, there are several specific documents included in Exhibit E that this Office would assert are attorney work product in their individual capacities. Specifically, the documents labeled in Exhibit E as attorney work product are notes created in preparation for trial and presenting the defendant's case to the grand jury. This Office alternatively seeks to withhold these individual documents under the attorney work product privilege incorporated into Section 552.111.

Section 552.111 provides that "[A]n interagency or intragency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021." The Office of the Attorney General has previously concluded that Section 552.11 incorporate the privilege for work product found in Rule 192.5 of the TEXAS RULES OF CIVIL PROCEDURE. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677, at 4-8 (2002). Specifically, Rule 192.5 defines "work product" as:

- (1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.

The responsive documents include a presentation created by an attorney representing the State outlining the facts of the underlying investigation in addition to significant legal matters and issues involved in the case. Throughout many of the documents responsive to the request, the attorney representing the State has made hand written notes and highlighted certain portions of the documents. Because these notes and highlighting

were prepared by an attorney for the State in anticipation of criminal litigation, this material reflects the attorney's mental impressions and opinions. Further, the presentation reflects the mental impressions and opinions of the attorney in anticipation of presenting the case to a grand jury, as well as the legal issues that may help or hinder any prosecutions that may follow a grand jury indictment. To the extent that the responsive documents consist of attorney work product excepted from disclosure by Section 552.111, this Office seeks to withhold that material.

IV. The documents sought by the Requestor consist of documents subpoenaed by the grand jury and a presentation given to the grand jury, which is secret under Section 552.101 of the GOVERNMENT CODE in conjunction with TEXAS CODE OF CRIMINAL PROCEDURE article 20.02.

Section 552.101 of the GOVERNMENT CODE excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, this statute encompasses into the Public Information Act confidentiality provisions found in other areas of the law. This includes TEXAS CODE OF CRIMINAL PROCEDURE article 20.02(a), which provides "[t]he proceedings of the grand jury shall be secret." Although this article does not define "proceedings," Texas courts have interpreted this to encompass "matters that take place before the grand jury, such as witness testimony and deliberations." *In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007).

Portions of the documents responsive to the Requestor include a presentation given to the grand jury by an attorney representing the State. In addition, the responsive documents include documents obtained as a result of subpoenas issued by the grand jury. Because the responsive documents include information that created expressly for and presented directly to the grand jury, this Office contends that information constitutes "matters that take place before the grand jury" and are confidential under GOVERNMENT CODE Section 552.101 in conjunction with CODE OF CRIMINAL PROCEDURE article 20.02.

V. The responsive documents include criminal history record information generated by NCIC and TCIC, which is confidential under Section 552.101 of the TEXAS GOVERNMENT CODE in conjunction with GOVERNMENT CODE Section 411.083.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Part 20 of title 28 of the Code of Federal Regulations governs the release of criminal history record information that states obtain from the federal government or other states. See Open Records Decision No. 565 (1990). The

federal regulations allow each state to follow its individual law with respect to the criminal history record information it generates.

Section 411.083 of the GOVERNMENT CODE makes confidential criminal history record information that the Texas Department of Public Safety maintains. A criminal justice agency may not release criminal history record information except to another criminal justice agency for a criminal justice purpose. *See* TEX. GOV'T CODE 411.089(b)(1). Under these statutes, the responsive documents generated by TCIC and NCIC are confidential under GOVERNMENT CODE Sections 411.083 and 552.101. This Office seeks to withhold the responsive documents generated by TCIC and NCIC for the foregoing reason.

VI. The responsive documents include medical records created or maintained by a physician regarding the identity, diagnosis, evaluation or treatment of a patient, which is made confidential under TEXAS OCCUPATIONS CODE Section 159.002 and GOVERNMENT CODE 552.101

As previously noted, Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Incorporated into the PUBLIC INFORMATION ACT through Section 552.101 is Section 159.002(b) of the TEXAS OCCUPATIONS CODE, which states "A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter."

Included in the responsive documents sought by the Requestor are confidential communications of the type contemplated by OCCUPATIONS CODE Section 159.002. Specifically, there are medical records created by physicians regarding the treatment of patients. To the extent that the responsive documents contain information made confidential by OCCUPATIONS CODE Section 159.002, this Office seeks to withhold that information.

VII. Portions of the responsive documents detail an investigation of alleged child abuse, which is rendered confidential under TEXAS GOVERNMENT CODE Section 552.101 in conjunction with TEXAS FAMILY CODE Section 261.201

Again, Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In addition, Section 261.201 of the TEXAS FAMILY CODE reads in part as follows:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Portions of the documents sought by the Requestor and attached as part of Exhibit E consists of the report, record, and working papers used or developed in an investigation made under Chapter 261 of the TEXAS FAMILY CODE.

Additionally, a court with authority to order the release of the information sought has not entered any court order compelling this Office to release the enclosed records in accordance with Section 261.201(b) of the TEXAS FAMILY CODE. Because portions of the documents in Exhibit E consist of information made confidential by FAMILY CODE 261.201, this Office believes that it is statutorily required to withhold the information sought under Section 552.101 of the TEXAS GOVERNMENT CODE in conjunction with Section 261.201 of the FAMILY CODE.

VIII. Third Party Notice has been given to the City of Arlington so that it may assert any additional exceptions to public release that it believes are applicable

Certain responsive documents held by this Office were obtained from the City of Arlington. Therefore, this Office has provided the City of Arlington with Third Party notice so that the City of Arlington can assert any additional reasons why the requested information should be withheld. *See* TEX. GOV'T CODE § 552.305; *see also* Third Party Notice to the City of Arlington, attached as Exhibit C.

Documents provided to the City of Arlington as part of the Third Party notice have been separated into Exhibit D. This Office asserts that the responsive documents in both Exhibit D and E are excepted from public release for the reasons articulated above and as more specifically indicated in blue markings on the face of the respective documents. However, this Office will also rely upon the City of Arlington to assert any additional exceptions to the documents contained in Exhibit D. *See* TEX. GOV'T CODE § 552.305(c).

IX. Conclusion

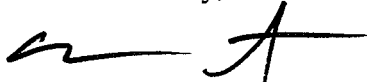
To the extent that the documents sought by the Requestor pertain to a closed criminal investigation and prosecution, this Office seeks to withhold the requested documents in full under Section 552.108. In addition, because the Requestor is seeking the entirety of the State's litigation file, this Office seeks to withhold the responsive documents in whole as core attorney work product under Section 552.111.

Alternatively, should the Office of the Attorney General rule that the responsive documents cannot be withheld in their entirety, this Office asserts the specific exceptions outlined above to portions of the responsive documents. Blue markings have been made on the responsive documents indicating more specifically what exceptions this Office asserts to which documents. *See* TEX. GOV'T CODE § 552.301(e)(2). The documents sought by the Requestor and presently withheld are attached as Exhibits D & E.

This letter will serve as notice to the Requestor that this Office is seeking a ruling regarding this public information request. I may be reached at (817) 884-1233 should any questions arise.

Sincerely,

Sharen Wilson
Criminal District Attorney
Tarrant County, Texas



MARK C. KRATOVIL
Assistant Criminal District Attorney

MCK/crs

Attachments

- Exhibit A- Public Information Act Request
- Exhibit B- Notice of Grand Jury No-Bill Vote
- Exhibit C- Third Party Notice to the City of Arlington
- Exhibit D- Documents provided to City of Arlington as part of the Third Party Notice
- Exhibit E- Documents sought to be withheld

Honorable Ken Paxton
Re: Daryl Washington PIA Request
September 7, 2017
Page 8

cc w/att. (Ex. A & C only):

Daryl Washington (*Requestor*) **VIA EMAIL ONLY -**
Washington Law Firm, P.C.
325 N. St. Paul, Suite 3950
Dallas, TX 75201

Mark C. Kratovil

From: CDA -- Open Records
Sent: Friday, August 25, 2017 3:37 PM
To: Mark C. Kratovil
Subject: FW: Open Records Request

From:
Sent: Friday, August 25, 2017 2:33 PM
To: CDA -- Open Records <OpenRecords@tarrantcountytx.gov>
Subject: Open Records Request

To whom it may concern:

Please be advised that we have been retained to represent the Estate of Tavis Crane in connection with an incident that occurred in Arlington, Texas on or about February 1, 2017. Tavis Crane ("Crane"), an unarmed black male, was shot multiple times, which resulted in his death.

In connection with incident in the above-referenced matter, we request a true, unredacted, and complete copy of the Offense Report; Accident photos; 911 Call Sheet; 911 tapes and recordings; Investigative file; documents used, reviewed, and furnished during the investigation relating to the death of Crane. This request includes but is not limited to any and all supporting documents, police reports, written statements, transcribed statements, videotapes, audiotapes, photographs, coroner documents, forensic evidence, and investigative reports related to the matter.

Please consider this request as made under the Texas Public Information Act, Chapter 552 of the Texas Government Code. This information is not being sought for commercial purposes. If access to the records I am requesting will take longer than that time period, please contact me with information about when I might expect copies or the ability to inspect the requested records. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Daryl K. Washington
Washington Law Firm, P.C.
325 N. St. Paul, Suite 3950
Dallas, Texas 75201
214-880-4883 - direct dial
214-751-6685 - direct fax
214-403-5464 - cell

www.dwashlawfirm.com



WASHINGTON LAW FIRM, P.C. E-MAIL NOTICES: This transmission may be: (1) subject to the Attorney-Client Privilege, an (2) attorney work product, or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete this message. Unauthorized interception of this e-mail is a violation of federal criminal law.

Unless it specifically so states, this communication does not reflect an intention by the sender or the sender's client or principal to conduct a transaction or make any agreement by electronic means. Unless it specifically so states, nothing contained in this message or in any attachment shall satisfy the requirements for a writing, and nothing contained herein shall constitute a contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions.

IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.



SHAREN WILSON
Criminal District Attorney
Tarrant County

August 24, 2017

Sergeant Brian Jones
Homicide Unit
Arlington Police Department
620 W. Division Street
Arlington, Texas 76004

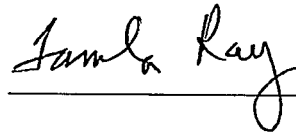
Subject: Officer Craig Roper #2939/Report No. 2017-00321073

Dear Sergeant Jones,

This letter is to inform you that the grand jury investigation into the death of Tavis Crane was completed on August 23, 2017. The grand jury voted to take no criminal action against the above-listed officer.

This matter is now considered closed by the Tarrant County Criminal District Attorney's Office.

Sincerely,

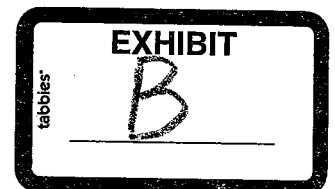


Tamla Ray

Assistant Criminal District Attorney

Chief Prosecutor

Law Enforcement Incidents Team





SHAREN WILSON
Criminal District Attorney
Tarrant County

September 7, 2017

Arlington City Attorney's Office
Attn: Tiffany Bull
MS 63-0300
P.O. Box 90231
Arlington, TX 76004-3231

VIA HAND DELIVERY

Re: Public Information Request Received from Daryl Washington

Dear Third Party:

This notice is to advise you that this Office, has received a formal request to inspect or copy some of our files. A copy of the request for information is enclosed. The requested files include records or information we received from your agency. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorneys general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and



c) explain why each exception applies.

Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's E-Filing System. An administrative convenience charge will be assessed for use of the E-Filing System. No other method of electronic submission is available. Please visit the attorney general's website at:

<http://www.texasattorneygeneral.gov>

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e).

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.104: Confidentiality of Information Relating to Competition

Boeing Co. v. Paxton, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated* by *In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Open Records Decision No. 639 (1996).

Open Records Decision No. 661 (1999).

Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information*

Notice to Third Parties

Re: Public Information Act Request re: Daryl Washington

September 7, 2017

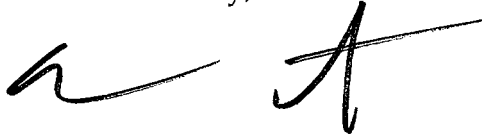
Page 4

Handbook or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

If you should have any questions concerning this matter, please do not hesitate to contact me or my Legal Assistant, Christina Sims, at (817) 884-1233. Thank you.

Sincerely,

Sharen Wilson
Criminal District Attorney
Tarrant County, Texas

A handwritten signature in black ink, appearing to read 'MARK C. KRATOVIL', with a stylized flourish at the end.

MARK C. KRATOVIL
Assistant Criminal District Attorney

MCK/crs

w/attachments as indicated:

Arlington City Attorney's Office
Attn: Tiffany Bull
MS 63-0300
P.O. Box 90231
Arlington, TX 76004-3231

VIA HAND DELIVERY

Exhibit A– Public Information Act Request
Exhibit B – Notice of Grand Jury No-Bill Vote
Exhibit C – Third Party Notice to the City of Arlington
Exhibit D – Documents provided to City of Arlington as part of the Third Party Notice

cc w/o attachments:

Honorable Ken Paxton
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

Notice to Third Parties

Re: Public Information Act Request re: Daryl Washington

September 7, 2017

Page 5

Daryl Washington (*Requestor*) **VIA EMAIL ONLY –**

Washington Law Firm, P.C.

325 N. St. Paul, Suite 3950

Dallas, TX 75201

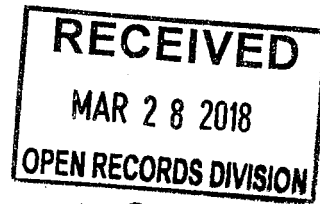


COUNTY of GALVESTON
LEGAL DEPARTMENT
COUNTY COURTHOUSE

722 MOODY AVENUE 5TH FLOOR GALVESTON, TEXAS 77550

ROBERT B. BOEMER
Director

BARRY C. WILLEY
MYRNA S. REINGOLD



OR-711486-18
711486
PAUL A. READY
BEVERLY WEST

March 26, 2018

Honorable Ken Paxton
Attorney General of Texas
Attn: Open Records Division
PO Box 12548
Austin, Texas 78711-2548

**Via Certified Mail, R.R.R.,
#7017 0530 0000 6319 0996**

Re: Request for decision under Public Information Act

Dear Attorney General Paxton,

Pursuant to Tex. Gov't Code § 552.301, we are requesting the Attorney General's decision about whether information held by Galveston County Sheriff's Office is excepted from disclosure under the Public Information Act.

We are within ten (10) business days after the date of receipt of the request for information.

The request for information was received by the Sheriff's Office on March 13, 2018. Accordingly, today is the ninth (9th) business day after the date of receipt of the request for information by the Sheriff's Office.

The Requestor is requesting "copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Toni Collins occurring on March 9, 2017, in Galveston County, Texas." A copy of the request for information is enclosed.

We have not released any requested information to the Requestor and wish to continue to withhold requested information. We believe the requested information is excepted from compelled disclosure pursuant to Tex. Gov't Code §§ 552.101, 552.102, 552.103, 552.107, 552.108, 552.1085, 552.115, 552.024, 552.117, 552.1175, 552.119, 552.130, 552.136, 552.137, 552.147 and/or all other applicable exceptions under the Act.

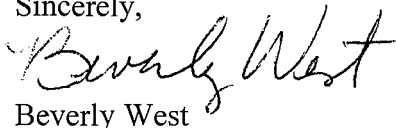
We sent notice to the Requestor that we wish to withhold requested information and that we are seeking an Attorney General decision along with a copy of this request for an Attorney General decision. A copy of our notice to the Requestor is enclosed.

We are requesting the Attorney General's assistance in resolving the question of whether the information is excepted from disclosure. In accordance with requirements of the Public Information Act, we anticipate providing further briefing on this matter.

Honorable Ken Paxton
March 26, 2018
Page 2

In the intervening time, if you have any questions please feel free to contact me on my direct line at (409) 770-5565. Thank you in advance for your consideration of this request for decision.

Sincerely,



Beverly West

Enclosures:

Request for Information
Notice to Requestor

cc:

T. Dean Malone
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202

**Via Certified Mail, R.R.R.,
#7017 0530 0000 6319 1009**

Captain Ron Hill
Galveston County Sheriff's Office
Identification Division
Via Electronic Mail
ron.hill@co.galveston.tx.us

Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

March 6, 2018

Via CMRRR No. 92147969009997901009479729

Galveston County Sheriff Office
601 54th Street
Galveston, TX 77551

RE: Public Information Act Request

Dear Galveston County Sheriff Office:

Please provide copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Toni Collins occurring on March 9, 2017 in Galveston County, Texas. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to be 'T. Dean Malone', written over the word 'Sincerely,'.

T. Dean Malone

TDM/cmr
3820

RECEIVED
GALVESTON COUNTY
SHERIFF'S OFFICE
18 MAR 13 AM 10:15



COUNTY of GALVESTON
LEGAL DEPARTMENT
COUNTY COURTHOUSE

722 MOODY AVENUE 5TH FLOOR GALVESTON, TEXAS 77550

ROBERT B. BOEMER
Director

BARRY C. WILLEY
MYRNA S. REINGOLD

PAUL A. READY
BEVERLY WEST

March 26, 2018

T. Dean Malone
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202

**Via Certified Mail, R.R.R.,
#7017 0530 0000 6319 1009**

Re: Public Information Act Request to Galveston County Sheriff's Office

Dear Mr. Malone:

Your request for information submitted to Galveston County Sheriff's Office was forwarded to my attention. You requested "copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Toni Collins occurring on March 9, 2017, in Galveston County, Texas." At this time, we wish to withhold the requested information because we believe the information is excepted from disclosure under the Texas Public Information Act.

In this regard, the Public Information Act requires a governmental body to provide notice to a requestor when the governmental body wishes to withhold requested information. This letter provides you, the Requestor in this matter, with such notice. Accordingly, you are advised that we wish to withhold the requested information and that we have asked for a decision from the Texas Attorney General about whether the requested information is within an exception to disclosure. A copy of our request for decision to the Texas Attorney General is enclosed.

If you have any questions, please feel free to call me on my direct number, (409) 770-5565.

Sincerely,


Beverly West

Enclosures:

Request for Information
Request for Decision

Notice to Requestor
March 26, 2018
Page 2

Cc with enclosures:

Honorable Ken Paxton
Attorney General of Texas
Attn: Open Records Division
PO Box 12548
Austin, Texas 78711-2548

**VIA CERTIFIED MAIL, R.R.R.,
7017 0530 0000 6319 0996**

Captain Ron Hill
Galveston County Sheriff's Office
Identification Division
Via Electronic Mail
ron.hill@co.galveston.tx.us

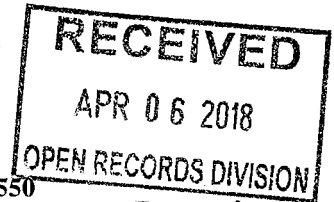


COUNTY of GALVESTON
LEGAL DEPARTMENT
COUNTY COURTHOUSE

722 MOODY AVENUE 5TH FLOOR GALVESTON, TEXAS 77550

ROBERT B. BOEMER
Director

BARRY C. WILLEY
MYRNA S. REINGOLD



PAUL A. READY
BEVERLY WEST

April 3, 2018

Honorable Ken Paxton
Attorney General of Texas
Attn: Open Records Division
PO Box 12548
Austin, Texas 78711-2548

**Via Certified Mail, R.R.R.,
7017 0530 0000 6319 1016**

Re: Request for decision under Public Information Act

Dear Attorney General Paxton,

Pursuant to Tex. Gov't Code § 552.301(e), we are requesting the Attorney General's decision about whether information held by Galveston County Sheriff's Office is excepted from disclosure under the Public Information Act.

The following is our supplemental briefing pursuant to Section 552.301(e) of the Act. We sent a Request for Opinion to your office on March 26, 2018, within ten (10) business days after the date of receipt of the request for information that included the request for information and exceptions to disclosure.¹ A copy of that letter is attached for your convenience.

The Requestor is requesting: "copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Toni Collins occurring on March 9, 2017, in Galveston County, Texas." A copy of the request for information is enclosed.

We are releasing the "basic information" contained in the report in accordance with Section 552.108(c) of the Government Code to the Requestor, but wish to continue to withhold the remaining requested information. We are also making the autopsy report available to this Requestor as it was previously released to this requestor under a prior request. We believe the remaining withheld requested information is excepted from compelled disclosure pursuant to Tex. Gov't Code §§ 552.101, 552.108, 552.114, 552.117, 552.130, 552.136, and 552.147.

We sent notice to the Requestor on March 26, 2018, that we wish to withhold requested information and that we are seeking an Attorney General decision along with a copy of this request for an Attorney General decision. We will also send a copy of this correspondence to the Requestor.

¹ Please note for purposes of calculating the 15-day deadline for this 552.301(e) briefing, the County, including the Sheriff's Office was closed in observance of the Good Friday holiday, on Friday, March 30, 2018.

We believe the requested information is excepted from disclosure under Section 552.108(a)(2) of the Government Code because the information the Requestor seeks is a criminal investigation that did not result in conviction or deferred adjudication and therefore, we have not released the requested information to the Requestor.

Additionally and alternatively, some of the withheld information is confidential by law pursuant to 552.101 of the Government Code, which excepts information from mandatory release if it is considered “confidential by law, either constitutional, statutory or by judicial decision.”² The requested information includes autopsy photographs that we believe must be withheld pursuant to section 11 of article 49.25 of the Code of Criminal Procedure; birth dates of members of the public excepted by 552.101 and common law privacy; motor vehicle information, which is excepted by Section 552.130 of the Act;³ and social security numbers excepted by Section 552.147 of the Act.

A. Law Enforcement Exception, § 552.108(a)(2)

The requested information deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. Accordingly, we believe the requested information is excepted from disclosure in its entirety pursuant to Section 552.108(a)(2) of the Government Code.⁴ Section 552.108(a)(2) provides that:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 [compelled disclosure] if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.⁵

In this instance, all of the requested information deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. Specifically, the Sheriff’s Office has advised that the requested information pertains to a closed criminal case that did not result in conviction or deferred adjudication. Thus, all elements of Section 552.108(a)(2) are satisfied.

B. Confidential by Law, § 552.101

In addition and alternatively, the requested information is confidential by law under Section 552.101 of the Government Code. Section 552.101 of the Government Code is the Act’s provision that serves to incorporate sources of law outside of the Act that make information confidential under the

² Tex. Gov’t Code § 552.101 (West 2012).

³ Tex. Gov’t Code § 552.130(a) (West Supp. 2015).

⁴ Tex. Gov’t Code Ann. § 552.108 (West 2012).

⁵ Tex. Gov’t Code Ann. § 552.108(a)(2).

umbrella of the Act.⁶ In this instance, the requested information is confidential by law under Section 552.101 in conjunction with common law privacy and judicial decisions as explained fully below.

Fingerprint Information

Requested information may include fingerprint information. By definition, fingerprints are a biometric identifier.⁷ Access to biometric identifiers must comply with Texas Government Code, Chapter 560.

Chapter 560 allows disclosure of biometric identifiers only in specified circumstances.⁸ As well, Chapter 560 expressly exempts biometric identifiers from compelled disclosure under the Act.⁹

The instant request for information is not accompanied by consent for release from anyone, does not involve any special right of access, and does not fall within any of the permissible disclosures enumerated within Chapter 560.

Accordingly, to the extent requested information includes fingerprint information, we believe the information is confidential by law under Section 552.101 of the Government Code in conjunction with Chapter 560 of the Government Code.

Criminal History Record Information/TCIC/NCIC Accessed through TLETS

To the extent any enclosed information constitutes criminal history record information, we believe the information is confidential under federal law and under Chapter 411, Subchapter F, of the Texas Government Code.¹⁰ Indeed, the unauthorized disclosure of criminal history record information is expressly prohibited by statute.¹¹ Accordingly, we believe any criminal history record information must be withheld pursuant to Section 552.101 of the Government Code in conjunction with applicable provisions within Chapter 411 of the Government Code.

⁶ Tex. Gov't Code Ann. § 552.101 (Vernon 2012). The Act "excepts from disclosure information which the constitution, a statute, or a judicial decision has declared confidential as a matter of law." *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 674 (Tex. 1995).

⁷ See Tex. Gov't Code § 560.001(1) ("[b]iometric identifier means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.").

⁸ See *id.* § 560.002(1) (allowing disclosure with the consent of the individual, if the disclosure is required or permitted by a federal statute or a state statute other than the Public Information Act, or if the disclosure is made by or to a law enforcement agency for law enforcement purposes).

⁹ See *id.* § 560.003 (stating, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.").

¹⁰ Specifically, we believe any TCIC/NCIC access is excepted from disclosure as information that is confidential by law in conjunction with Chapter 411 of the Texas Government Code and/or federal law. See Tex. Gov't Code §§ 411.083(a), 411.089; see 28 C.F.R. § 20.21(b),(c)(1),(2).

¹¹ See Tex. Gov't Code § 411.085.

Moreover, protected criminal history record information includes Texas Crime Information Center (TCIC) and National Crime Information Center (NCIC) information obtained through the Texas Law Enforcement Telecommunication System (TLETS); thus, we believe we are required to withhold such information.

TLETS is a communication system utilized by law enforcement agencies to access TCIC and NCIC information. Access to TLETS is rigorously controlled and subject to State and Federal regulation. These provisions restrict a law enforcement agency's use of the system and require confidentiality for the information.¹²

As well, the Attorney General formally addressed the release of TCIC/NCIC obtained through the TLETS in Open Records Decision No. 565 (1990), opining that such information is confidential and is not allowed for individual access.¹³ Thus, under ORD-565, the TLETS information is confidential by law and must be withheld.

Autopsy Photos

In addition/alternative to the 552.108(a)(2) exception, we believe the photographs of a body taken during an autopsy are confidential under Section 552.101 of the Government Code in conjunction with Article 49.25 of the Code of Criminal Procedure.¹⁴ In this regard, the release of photographs of a body taken during an autopsy is expressly addressed within Article 49.25 of the Code of Criminal Procedure - Section 11 of Article 49.25 of the Code of Criminal Procedure provides in relevant part, that "a photograph...of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:... (2) if the photograph...is of the body of a person who died while in the custody of law enforcement."¹⁵

In this instance, the death is from an officer involved shooting. However, the term "in the custody of law enforcement" is not defined within Article 49.25. Article 49.18 defines the term "in the custody of a peace officer" to mean "under arrest by a peace officer; or under the physical control or restraint of a peace officer."¹⁶ However, this term is for purposes of determining whether a custodial death report is required (which is also required if force is used), rather than determining whether photographs of a body taken during an autopsy are confidential by law.

¹² Withholding TCIC/NCIC obtained through TLETS is *mandatory*.

¹³ See Tex. Att'y Gen. ORD-565 (1990), at pages 10-12.

¹⁴ The Medical Examiner's photographs include scene photographs, which are clearly excepted under Section 552.108(a)(1) of the Government Code; photographs taken during an autopsy but not of the body, which are similarly excepted under Section 552.108(a)(1); and photographs of a body taken during an autopsy, which we believe are excepted from compelled disclosure under Section 552.108(a)(1) and/or 552.101 of the Government Code.

¹⁵ Tex. Code Crim. Proc. Ann. art. 49.25 § 11.

¹⁶ *Id.* § 49.18(d)(2).

Finally, in Informal Letter Ruling Numbers OR2013-14544 (issued to Texas Department of Public Safety) and OR2017-09889 (issued to the City of Fort Worth), the Attorney General ruled that the exceptions to confidentiality stated within Article 49.25 did not apply to compel the release of photographs of a body taken during an autopsy on the deaths, which each resulted from an officer-involved shooting. Accordingly, we believe the autopsy photographs in the withheld requested information must be withheld.

Psychological/Physical Declarations (L2/L3)

Requested information includes declarations of psychological and physical examinations (L-2 and L-3 Declarations) on the officer, which the Sheriff's Office received from the Galveston Police Department during its investigation and that a law enforcement agency is required to maintain under Subchapter G, Chapter 1701, of the Occupations Code. In this regard, Occupations Code, Section 1701.306(b) provides, in part, that "[a] declaration is not public information."¹⁷

We believe the L-2 and L-3 declarations, and the information that accompanies each, must be withheld. Indeed, the L-2 and L-3 are confidential under Chapter 1701 of the Occupations Code. Alternatively, if the Attorney General determines that the information that must accompany an L-2/L-3 is not protected under Section 1701.306 of the Occupations Code, then the instant requests for information do not satisfy any permissible disclosure enumerated by the Medical Practice Act, which is at Chapter 159 of the Occupations Code, or by Chapter 611 of the Health and Safety Code. Accordingly, we believe we must withhold any L-2 forms, L-3 forms, and the information accompanying each form.¹⁸

Dates of Birth – Privacy Rights

In *Paxton v. City of Dallas*, the Court held that dates of birth of members of the public are confidential by law under Section 552.101 of the Government Code.¹⁹ We have marked these birthdates in the requested information and believe it is confidential by law under Section 552.101 of the Government Code in conjunction with common law privacy rights, as set forth in *Paxton*.²⁰ Thus, we believe we may continue to withhold the dates of birth.

¹⁷ Tex. Occup. Code Ann. § 1701.306(b) (West 2012).

¹⁸ See Tex. Att'y Gen. ORD-684 (2009) (opining that L-2 and L-3s are confidential by law under Section 552.101 of the Government Code in conjunction with Section 1701.306 of the Occupations Code and issuing a previous determination authorizing a governmental body to withhold such information without the necessity of seeking a decision from the Attorney General).

¹⁹ *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL3394061 at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

²⁰ *Id.* (concluding that “based on the supreme court’s rationale in *Texas Comptroller*, public citizens have a privacy interest in their birth dates such that the ‘publication [of birth dates] would be highly objectionable to a reasonable person.’”) (citations omitted).

C. Home address, phone number, social security number, family information of a peace officer, § 552.117

The home address, home telephone number, personal cell phone number, social security number, and information revealing family members of a peace officer are excepted from compelled disclosure under Section(s) 552.117 of the Government Code.

As stated above, the criminal investigation requested by the Requestor includes information on a named peace officer that was provided to the Sheriff's Office through an intergovernmental exchange of information from the Galveston Police Department. Under Section 552.117 of the Government Code, a governmental body may withhold the home address, home telephone number, emergency contact information, social security number of a peace officer and information revealing whether the peace officer has family members regardless of whether the peace officer has an Open Records Election on file with the agency/employer.²¹ We wish to withhold the information and believe it is excepted from disclosure under Section 551.117 of the Government Code.²²

D. Motor Vehicle Record Information, § 552.130

We believe we are required to withhold motor vehicle record information under Section 552.130 of the Government Code, the Act's exception for motor vehicle records information. The Act's exception for motor vehicle records excepts information from required disclosure if the information relates to a motor vehicle operator's or driver's license or permit issued by an agency of the State of Texas, or to a motor vehicle title or registration issued by an agency of the State of Texas.²³ Accordingly, we believe we are prohibited from releasing this motor vehicle record information that is displayed within the requested information. This information is highlighted and marked in the responsive information.

E. Educational Transcripts, FERPA, § 552.114

The requested information contains peace officers educational transcripts . We believe these transcripts are protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA")²⁴, and/or 552.114 as a student record obtained from the educational institutions that created these documents and as such we are prohibited from disclosing them. This is information provided in an intergovernmental exchange from the Galveston County Police Department to the Sheriff's Office as part of the criminal investigation that is the subject of this request.

²¹ See Tex. Gov't Code § 552.117(a)(2); see Tex. Att'y Gen. ORD-670 (2001) (issuing a previous determination for governmental bodies to withhold, inter alia, a peace officer's home address, home phone, and personal cell phone number under Section 552.117 without the necessity of seeking a decision from the Attorney General).

²² See Tex. Gov't Code §§ 552.117, 552.1175; see ORD-670 (2001).

²³ Tex. Gov't Code § 552.130(a) (West Supp. 2015).

²⁴ 20 U.S.C. § 1232g.

F. Access Device Information, § 552.136 and TCOLE/PID Numbers

To the extent any requested information reveals access device information, we believe we are required to withhold that information pursuant to Section 552.136 of the Government Code. In this regard, Section 552.136 defines an “access device” for purposes of this statutory exception, stating, in part, that:

“[a]ccess device means a card, plate, code, *account number, personal identification number*, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier *or means of account access* that alone or in conjunction with another access device may be used to obtain money, goods, services, or another thing of value....”²⁵

Thus, to the extent any requested information discloses any of the above information, we believe we are required to withhold the information.

Some requested information reveals the peace officer’s Texas Commission on Law Enforcement (TCOLE) identification number. This was formerly called the TCLEOSE number and is also sometimes referred to as the PID number. For convenience, since the current term is TCOLE number, we refer to TCOLE number to include any prior designation as well.

The TCOLE number does not constitute “public information” under the Act. Therefore, the Act does not govern access to the TCOLE number. Each peace officer’s TCOLE number is a unique computer-generated number assigned to the peace officer for identification within the TCOLE database and is used to gain access within the TCOLE database. Accordingly, we believe the TCOLE number does not constitute “public information” for purposes of the Act. As such, the Act is inapplicable and does not govern the release of the TCOLE/TCLEOSE/PID number.²⁶

As well, because the TCOLE number provides access into the TCOLE system for each officer’s own records, then in the event the Attorney General rules that the TCOLE/PID number is subject to the Act, then we believe the TCOLE number constitutes access device information such that it must be withheld under Section 552.136 of the Government Code. To this end, Section 552.136 clearly covers “passwords” as it covers personal identification numbers (which are passwords), as well as *another identifier or means of account access*.²⁷ Thus, in the event the Attorney General opines that a TCOLE number is subject to the Act, then in addition/alternative, we believe it is excepted from compelled disclosure under Section 552.136 of the Government Code.

²⁵ *Id.* § 552.136(a)(b) (emphasis added).

²⁶ See Tex. Gov’t Code § 552.002 (defining “public information” for purposes of the Act); see generally Tex. Att’y Gen. ORD-581 (1990) (opining that the Act does not govern access to certain kinds of computer information).

²⁷ See Tex. Gov’t Code § 552.136(a) (emphasis added).

G. Social Security Numbers, § 552.147

In the event any information discloses a social security number of a living person, we believe we are required to withhold that number pursuant to Section 552.147 of the Government Code.

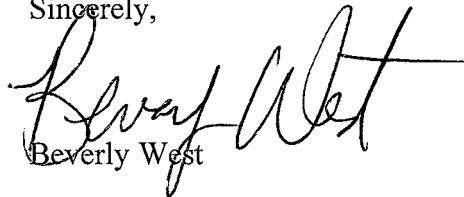
Conclusion

In conclusion, we are requesting your review of this matter because we wish to continue to withhold some of the requested information. We have timely complied with all requirements of the Act – thus, all exceptions to disclosure remain applicable in this matter. We have labeled and marked the exceptions to disclosure in the enclosed requested information for your review.

We believe all the requested information is excepted from disclosure by common-law privacy as a compilation of criminal history information, 552.101, and additionally the Law Enforcement Exceptions, 552.108(a)(1) and (a)(2) of the Government Code. All other exceptions herein are additional/alternative exceptions for withholding certain requested information.

If you have any questions or need anything further in your review of this request for decision, please contact me at my direct extension, (409) 770-5565. Thank you for your consideration of this request for decision.

Sincerely,



Beverly West

Enclosures:

Copy of March 26, 2018 Request for Decision
Copy of Request for Information
Copy of Requested Information with noted exceptions

cc:

T. Dean Malone
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202

**Via Certified Mail, R.R.R.,
#7017 0530 0000 6319 1023**

Captain Ron Hill
Galveston County Sheriff's Office
Identification Division
Via Electronic Mail
ron.hill@co.galveston.tx.us



COUNTY of GALVESTON
LEGAL DEPARTMENT
COUNTY COURTHOUSE

722 MOODY AVENUE 5TH FLOOR GALVESTON, TEXAS 77550

ROBERT B. BOEMER
Director

BARRY C. WILLEY
MYRNA S. REINGOLD

PAUL A. READY
BEVERLY WEST

March 26, 2018

Honorable Ken Paxton
Attorney General of Texas
Attn: Open Records Division
PO Box 12548
Austin, Texas 78711-2548

Via Certified Mail, R.R.R.,
#7017 0530 0000 6319 0996

Re: Request for decision under Public Information Act

Dear Attorney General Paxton,

Pursuant to Tex. Gov't Code § 552.301, we are requesting the Attorney General's decision about whether information held by Galveston County Sheriff's Office is excepted from disclosure under the Public Information Act.

We are within ten (10) business days after the date of receipt of the request for information.

The request for information was received by the Sheriff's Office on March 13, 2018. Accordingly, today is the ninth (9th) business day after the date of receipt of the request for information by the Sheriff's Office.

The Requestor is requesting "copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Toni Collins occurring on March 9, 2017, in Galveston County, Texas." A copy of the request for information is enclosed.

We have not released any requested information to the Requestor and wish to continue to withhold requested information. We believe the requested information is excepted from compelled disclosure pursuant to Tex. Gov't Code §§ 552.101, 552.102, 552.103, 552.107, 552.108, 552.1085, 552.115, 552.024, 552.117, 552.1175, 552.119, 552.130, 552.136, 552.137, 552.147 and/or all other applicable exceptions under the Act.


We sent notice to the Requestor that we wish to withhold requested information and that we are seeking an Attorney General decision along with a copy of this request for an Attorney General decision. A copy of our notice to the Requestor is enclosed.

We are requesting the Attorney General's assistance in resolving the question of whether the information is excepted from disclosure. In accordance with requirements of the Public Information Act, we anticipate providing further briefing on this matter.

Honorable Ken Paxton
March 26, 2018
Page 2

In the intervening time, if you have any questions please feel free to contact me on my direct line at (409) 770-5565. Thank you in advance for your consideration of this request for decision.

Sincerely,


Beverly West

Enclosures:

Request for Information
Notice to Requestor

cc:

T. Dean Malone
Law Offices of Dean Malone
Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202

**Via Certified Mail, R.R.R.,
#7017 0530 0000 6319 1009**

Captain Ron Hill
Galveston County Sheriff's Office
Identification Division

Via Electronic Mail
ron.hill@co.galveston.tx.us

Founders Square
900 Jackson Street, Suite 730
Dallas, Texas 75202



Telephone: 214.670.9989
Fax: 214.670.9904
www.deanmalonelawfirm.com

March 6, 2018

Via CMRRR No. 92147969009997901009479729

Galveston County Sheriff Office
601 54th Street
Galveston, TX 77551

RE: Public Information Act Request

Dear Galveston County Sheriff Office:

Please provide copies of all documents, audio recordings, and video recordings evidencing, referencing, or relating to the death of Toni Collins occurring on March 9, 2017 in Galveston County, Texas. Thank you for your assistance.

Sincerely,

T. Dean Malone

TDM/cmr
3820

RECEIVED
GALVESTON COUNTY
SHERIFF'S OFFICE
18 MAR 13 AM 10:15



RECEIVED

APR 12 2018

OPEN RECORDS DIVISION

OK-714186-18
714186

J D Lambright

County Attorney
Montgomery County

501 N. Thompson
Suite # 300
Conroe, Texas 77301

936/539-7828
Fax 936/760-6920

April 10, 2018

Honorable Ken Paxton
Office of the Attorney General
Attn: Open Records Division
Post Office Box 12548
Austin, Texas 78711-2548

Re: Open Records Request File 18PIA144

Dear General Paxton:

On March 26, 2018 the Montgomery County Sheriff's Office received the enclosed request for information. *See Exhibit A.* Please note that all Montgomery County offices, including our office and the Montgomery County Sheriff's Office were closed on March 30, 2018.

The Montgomery County Sheriff's Office believes that portions of the request are exempt from disclosure and raises exceptions to release pursuant to Texas Government Code sections 552.101 through 552.154, including the common-law right to privacy. The required brief and applicable exhibits will be submitted in the timeframe permitted by law.

Sincerely,

MONTGOMERY COUNTY ATTORNEY'S OFFICE

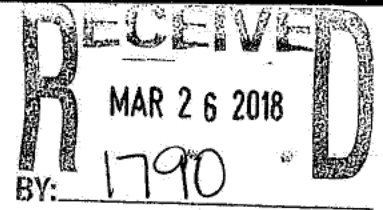
John McKinney, Assistant County Attorney

Enclosures

C: Eva Ruth Moravec

MCSO Open Records

From: Eva Ruth
Sent: Monday, March 26, 2018 11:09 AM
To: MCSO Open Records
Subject: records request (2)
Attachments: MOCO_RashidRequest.docx



Hello,

Please find attached open records request. This is the third of three emailed requests that I have sent to Montgomery County Sheriff's Office over the past 24 hours. Just wanted to clarify that in case there was any confusion.

Thank you,

Eva Ruth Moravec

--

(210) 422-9737 cell

Twitter

Portfolio

<http://pointofimpacttx.com/>

Exhibit A

Montgomery County Sheriff's Office
Attn: Open Records
Sent via email: mcsoopenrecords@mctx.org

Good morning,

Under the Texas Public Information Act, I respectfully request the following records:

-Any and all records – to include audio, video and documents – related to the arrest, incarceration and death of Mosheer Rashid. Mr. Rashid was booked into Montgomery County Jail on 9/27/17 and died on 12/19/17.

If possible, I would like to obtain these records electronically. Please notify me if you anticipate a fee in connection with my request. Also, please feel free to call or email me with any questions or comments on my request: 210-422-9737;

Thank you,
Eva Ruth Moravec

RECEIVED

APR 18 2018

OPEN RECORDS DIVISION

714686
714808



J D Lambright

County Attorney
Montgomery County

501 N. Thompson
Suite # 300
Conroe, Texas 77301

936/539-7828
Fax: 936/760-6920

OPEN RECORDS DIVISION

April 16, 2018

Office of the Attorney General
Attn: Open Records Division
Post Office Box 12548
Austin, Texas 78711-2548

Re: Open Records Request File 18PIA144

Dear Attorney General Paxton:

On March 26, 2018, the Montgomery County Sheriff's Office received the enclosed request for information. Please note that all Montgomery County offices were closed on March 30, 2018. On April 10, 2018, we notified your office that we would seek an opinion on whether the information requested was excepted from disclosure. The information requested is excepted from disclosure pursuant to Section 552.101 of the Government Code as it encompasses the doctrine of common law privacy and Section 552.108. We have attached a memorandum brief, the request letter, and the responsive documents. Please provide us with an opinion in this matter.

Sincerely,

MONTGOMERY COUNTY ATTORNEY'S OFFICE

John K. McKinney Jr.
Assistant County Attorney

Enclosures
cc: Eva Ruth Moravec



J D Lambright

County Attorney
Montgomery County

501 N. Thompson
Suite # 300
Conroe, Texas 77301

936/539-7828
Fax: 936/760-6920

BRIEF IN MEMORANDUM

On March 26, 2018 the Montgomery County Sheriff's Office received the enclosed written request for information. See Exhibit A. Please note that all Montgomery County offices were closed on March 30, 2018.

On April 10, 2018 we notified your office that we would seek an opinion on whether the information requested was excepted from disclosure. See Exhibit A. The requestor, Eva Ruth Moravec, has asked for a copy of all records including audio, video, and document, related to the arrest, incarceration and death of Carl Bible." The information responsive to this request is attached as Exhibit B.

The information attached as Exhibit B has not been released because we believe it is excepted from disclosure pursuant to Section 552.101 of the Government Code, which states:

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

TEX. GOV'T. CODE ANN. § 552.101.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court specifically held that information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs are types of information considered intimate. *Id.* at 683.

The responsive documents include documents relating to the mental/physical health of a person who is not the requestor and therefore should be withheld.

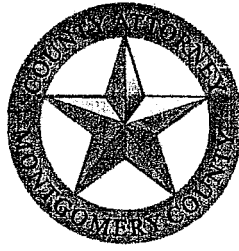
In addition, the requested information has not been released because the information is excepted from public disclosure pursuant to Section 552.108(b) of the Government Code. Section 552.108(b) provides that:

- (b) An internal records or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record would interfere with the detection, investigation, or prosecution of crime;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:
- (4) it is information that:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

TEX. GOV'T CODE ANN. § 552.108.

The requested information relates to an investigation conducted by the Montgomery County Sheriff's Office that did not result in conviction or deferred adjudication. Therefore, Section 552.108(b)(2) is applicable and the documents should be withheld.



COPY

J D Lambright

County Attorney
Montgomery County

501 N. Thompson
Suite # 300
Conroe, Texas 77301

936/539-7828
Fax 936/760-6920

April 10, 2018

Honorable Ken Paxton
Office of the Attorney General
Attn: Open Records Division
Post Office Box 12548
Austin, Texas 78711-2548

Re: Open Records Request File 18PIA144

Dear General Paxton:

On March 26, 2018 the Montgomery County Sheriff's Office received the enclosed request for information. *See* Exhibit A. Please note that all Montgomery County offices, including our office and the Montgomery County Sheriff's Office were closed on March 30, 2018.

The Montgomery County Sheriff's Office believes that portions of the request are exempt from disclosure and raises exceptions to release pursuant to Texas Government Code sections 552.101 through 552.154, including the common-law right to privacy. The required brief and applicable exhibits will be submitted in the timeframe permitted by law.

Sincerely,

MONTGOMERY COUNTY ATTORNEY'S OFFICE

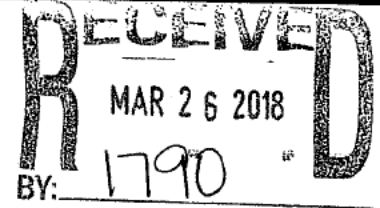
John McKinney, Assistant County Attorney

Enclosures

C: Eva Ruth Moravec

MCSO Open Records

From: Eva Ruth
Sent: Monday, March 26, 2018 11:09 AM
To: MCSO Open Records
Subject: records request (2)
Attachments: MOCO_RashidRequest.docx



Hello,
Please find attached open records request. This is the third of three emailed requests that I have sent to Montgomery County Sheriff's Office over the past 24 hours. Just wanted to clarify that in case there was any confusion.
Thank you,
Eva Ruth Moravec

--
(210) 422-9737 cell
[Twitter](#)
[Portfolio](#)
<http://pointofimpacttx.com/>

Exhibit A

Montgomery County Sheriff's Office
Attn: Open Records
Sent via email: mcsoopenrecords@mctx.org

Good morning,

Under the Texas Public Information Act, I respectfully request the following records:

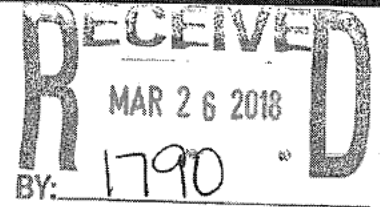
-Any and all records – to include audio, video and documents – related to the arrest, incarceration and death of Mosheer Rashid. Mr. Rashid was booked into Montgomery County Jail on 9/27/17 and died on 12/19/17.

If possible, I would like to obtain these records electronically. Please notify me if you anticipate a fee in connection with my request. Also, please feel free to call or email me with any questions or comments on my request: 210-422-9737;

Thank you,
Eva Ruth Moravec

MCSO Open Records

From: Eva Ruth
Sent: Monday, March 26, 2018 11:09 AM
To: MCSO Open Records
Subject: records request (2)
Attachments: MOCO_RashidRequest.docx



Hello,

Please find attached open records request. This is the third of three emailed requests that I have sent to Montgomery County Sheriff's Office over the past 24 hours. Just wanted to clarify that in case there was any confusion.

Thank you,
Eva Ruth Moravec

--
(210) 422-9737 cell
[Twitter](#)
[Portfolio](#)
<http://pointofimpacttx.com/>

Montgomery County Sheriff's Office
Attn: Open Records
Sent via email: mcsopenrecords@mctx.org

Good morning,

Under the Texas Public Information Act, I respectfully request the following records:

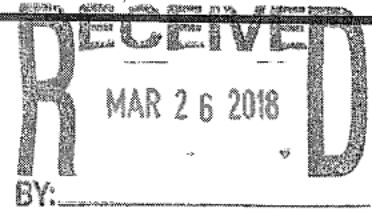
-Any and all records – to include audio, video and documents – related to the arrest, incarceration and death of Mosheer Rashid. Mr. Rashid was booked into Montgomery County Jail on 9/27/17 and died on 12/19/17.

If possible, I would like to obtain these records electronically. Please notify me if you anticipate a fee in connection with my request. Also, please feel free to call or email me with any questions or comments on my request: 210-422-9737;

Thank you,
Eva Ruth Moravec

MCSO Open Records

From: Eva Ruth
Sent: Sunday, March 25, 2018 11:47 AM
To: MCSO Open Records



Hello,
Pursuant to the Texas Public Information Act and state laws, I am requesting a copy of the custodial death report related to the 12/19/17 death of Mosheer Rashid in the custody of the Montgomery County Sheriff's Office. I could not locate the CDR in the Texas Attorney General's database (<https://oagtx.force.com/cdr/cdrreportdeaths>).
Thank you,
Eva Ruth Moravec

--
(210) 422-9737 cell
[Twitter](#)
[Portfolio](#)
<http://pointofimpacttx.com/>

Tom Berg
First Assistant

Vivian King
Chief of Staff



RECEIVED

MAY 29 2018

OPEN RECORDS DIVISION

Criminal Justice Center
1201 Franklin, Suite 600
Houston, Texas 77002-1901

02-721756-18
721756

HARRIS COUNTY DISTRICT ATTORNEY
KIM K. OGG

May 24, 2018

Hon. Ken Paxton
Attorney General
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548
Sent by certified mail, RRR, #70172400000105091988

Re: Public Information Act Request – Requestor Randall Kallinen

Dear Sir:

On May 10, 2018, this office received the enclosed request for disclosure of information from Randall Kallinen which I have construed as a request for information under the Public Information Act. (attached as Appendix A). In his request, Mr. Kallinen seeks the following:

“[T]he State’s file in the police shooting case of Joshua Johnson which happened October 16, 2017 including videos.”

“All the law enforcement shooting info from July 1, 2017 to the present.”

Request for Determination

On behalf of the District Attorney of Harris County, Texas, I request that the Attorney General determine whether the information sought by the author of the enclosed correspondence is exempt from disclosure under all available exceptions provided by TEX. GOV'T CODE Chapter 552, including but not limited to §§ 552.101, 552.102, 552.103, 552.107, 552.108, 552.1085, 552.109, 552.110, 552.111, 552.117, 552.1175, 552.119, 552.129, 552.130, 552.1325, 552.137, 552.147 and 552.152.

Hon. Ken Paxton
May 24, 2018
Page 2.

The District Attorney will submit detailed comments and the withheld responsive information or representative samples thereof for your review under separate cover within the statutory deadline for responding under the Act.

Conclusion

For the reasons that will be submitted within the statutory deadline to respond under the Act, the District Attorney asks that you find that the materials described herein are excepted from disclosure under the Public Information Act.

Sincerely,



Elizabeth Stevens
Assistant General Counsel
Office of the District Attorney
(713) 274-5949

cc: Requestor Randall Kallinen (w/o attachments) – Via email

Tom Berg
First Assistant

Vivian King
Chief of Staff



Criminal Justice Center
1310 Prairie, Suite 500
Houston, Texas 77002-1901

RECEIVED

JUN 04 2018

HARRIS COUNTY DISTRICT ATTORNEY

KIM OGG

May 31, 2018

OPEN RECORDS DIVISION

721756

722837

Hon. Ken Paxton
Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Sent by certified mail, RRR, #70172400000105092039

Re: Public Information Act Request – Requestor Randall Kallinen

Dear Sir:

On May 10, 2018, this office received the enclosed request for disclosure of information from Randall Kallinen which I have construed as a request for information under the Public Information Act. (Appendix A). In his request, Mr. Kallinen seeks a copy of:

“the State’s file in the police shooting case of Joshua Johnson which happened October 16, 2017 including videos.”¹

Based on this language, the scope of this request encompasses the Harris County District Attorney’s Office investigative file related to the shooting which not result in any conviction or deferred adjudication. A copy of the requested file is enclosed as Appendix B. The copy is of the entire file, except that representative samples of the media and photos are attached as they are voluminous.

On May 24, 2018, the District Attorney timely requested that the Attorney General determine whether the information sought by the author of the enclosed correspondence is exempt from disclosure under all available exceptions provided by TEX. GOV'T CODE Chapter 552, including but not limited to §§ 552.101, 552.102, 552.103, 552.107, 552.108, 552.1085, 552.109, 552.110, 552.111, 552.117, 552.1175, 552.119, 552.129, 552.130, 552.1325, 552.137, 552.147 and 552.152. (Appendix B). The District Attorney now timely

¹ Mr. Kallinen also requested: All the law enforcement shooting info from July 1, 2017 to the present. The responsive information has been provided.

submits the requested information or representative samples and the following written comments regarding the applicability of the Public Information Act to these materials:

A. *Section 552.108(a)(2) & (b)(2) – Information relating to an investigation that did not result in conviction or deferred adjudication*

Texas Government Code Section 552.108(a)(2) states that information held by a prosecutor, that deals with the investigation of a crime, is excepted from disclosure if the information deals with an investigation that did not result in a final conviction or deferred adjudication. TEX. GOV'T CODE § 552.108(a)(2); *see also* Tex. Att'y Gen. Op. No. OR2014-02130 (2014).

Section 552.108(b)(2) further states that an internal record or notation of a law enforcement agency or prosecutor, that is maintained for internal use in matters relating to law enforcement or prosecution, is excepted from the requirements of Section 552.021 if “the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication.” TEX. GOV'T CODE § 552.108(b)(2); *see e.g.* Tex. Att'y Gen. Op. OR2014-02620 (2014) (“Subsection 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication.”); Tex. Att'y Gen. Op. No. OR2013-22048 (2013); Tex. Att'y Gen. Op. No. OR2012-12877 (2012).

On October 16, 2017 the Harris County District Attorney's Office Public Corruption Division opened an investigation into the shooting of Joshua Johnson by Precinct 4 Deputy Constable Trevor Potter. (*See* Appendix C). The case was presented to the Grand Jury on April 16, 2018, and the Grand Jury returned a no bill. (*See* Appendix C).

The investigation at issue did not result in conviction or deferred adjudication. As such, the State's investigative file is exempt from disclosure under Section 552.108(a)(2) and (b)(2).

B. *Section 552.108(a)(4) & (b)(3) – Prosecutorial work product*

In requesting the District Attorney's *entire* file, the information requested necessarily calls for the District Attorney's work product. In *State ex rel. Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that even if specific items in a prosecutor's litigation file might be unprivileged and subject to discovery, enforcement of a request for the entire contents of the file would violate the prosecutor's work product privilege by revealing his thought processes in selecting and organizing the

items included therein. *See* Tex. Att’y Gen. Letter Ruling OR2004-0944 (2004) (citing *Curry*: “When a request essentially seeks the entire prosecution file, the information is excepted from disclosure in its entirety... In this instance, we agree that the request encompasses the prosecutor’s entire case file. *Curry* thus provides that the release of the information would reveal the prosecutor’s mental impressions or legal reasoning.”). This decision further reinforces that the requestor is not entitled to the requested information.

C. Section 552.101 – Confidential information

I also refer you to Section 552.101, which exempts information that is confidential by law.

Appendix B contains the following confidential information:

- ***Driver’s License Numbers and Related Personal Information***, which are confidential under Tex. Gov’t Code § 522.130 and Texas Transportation Code §§ 521.052 and 730.004.
- ***Dates of Birth***, Dates of birth are confidential pursuant to the doctrine of common-law privacy under *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *1 (Tex. App. May 22, 2015), *review denied* (Sept. 4, 2015).
- ***Criminal History Information*** obtained from the Department of Public Safety, which is confidential pursuant to TEX. GOV’T CODE § 411.081, *et seq.*
- ***Social Security Numbers***, which are confidential under 42 U.S.C. § 405(c)(2)(C)(viii)(I).
- ***Information Relating to Grand Jury Proceedings***, which are secret pursuant to Texas Code of Criminal Procedure art. 20.02(a), (h).

Hon. Ken Paxton
May 31, 2018
Page 4.

Conclusion

For the foregoing reasons, the District Attorney asks that you find that the materials requested by Mr. Kallinen are excepted from disclosure under the Public Information Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Stevens', with a long horizontal flourish extending to the right.

Elizabeth Stevens
Assistant General Counsel
Office of the District Attorney
(713) 274-5949

cc: Requestor Randall Kallinen (w/o attachments) – Via email

Appendix A

From: Randall L. Kallinen
Sent: Thursday, May 10, 2018 6:57 PM
To: Durfee, Scott
Cc: Goode, Zahra
Subject: Two Open Records Requests

Dear Scott,

I hope you have been doing well.

I need a copy of the State's file in the police shooting case of Joshua Johnson which happened October 16, 2017 including videos.

Also, I need all the law enforcement shooting info from July 1, 2017 to the present.

Thank you.

Sincerely,
Randall L. Kallinen
Kallinen Law PLLC
511 Broadway Street
Houston, Texas 77012
Telephone: 713.320.3785
FAX: 713.893.6737
Email:

WARNING: Confidential; Attorney/Client Privilege

This e-mail message is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. Unauthorized review, use, disclosure or distribution is strictly prohibited. This e-mail concerns legal matters and contains information protected by attorney/client privilege, attorney work product privilege, and investigation privilege as well as other possible privileges and none of these privileges are waived. Dissemination, forwarding, discussing, or sharing of this e-mail or its content is forbidden. Please notify the lawyer named above if you receive this message and you are not the intended recipient.

Appendix B

RECEIVED

JUN 18 2018

CITY OF SAN ANTONIO OPEN RECORDS DIVISION

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

OR-724729-18
724729

June 14, 2018

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

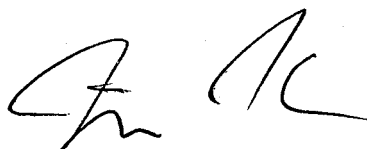
Re: Request for an Open Records Decision
Our File No.: W217343

Dear Sirs:

On May 31, 2018, the city of San Antonio received an open records request from Margie Lopez. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

cc: Margie Lopez

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W217343-053118

Date Submitted: 5/31/2018 12:44:32 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/14/2018 8:00:00 AM

Requestor:

M Lopez

--

Information Requested:

Describe the document(s) you are requesting: Re: Freedom of Information Request Our Client: Razavi, Walter as next friend of S.E.R. a minor Date of Incident: January 27, 2018 Type of Incident: Welfare Check SAPD CASE NO: SAPD 18018451 Your Employees: SAPD Officer Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982 To Whom It May Concern: Pursuant to the Freedom of Information Act (FOIA), please accept this letter as our request for copies of the 911 tapes, any and all rulings, decisions, findings, conclusions, investigation reports, crash report, witness statements, CID Investigation to include: inspections, analysis, policies and procedures, photographs, videotapes, personnel files of the following: San Antonio Police Officer Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982, and other documentation prepared by, or in the possession of the San Antonio Police Department. Should a prepayment be required, please fax or mail your request to this office so that we may expedite a prepayment to you.

RECEIVED

JUN 25 2018

OPEN RECORDS DIVISION

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

724729
725444

June 21, 2018

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling
Requestor: Margie Lopez
Date request received: May 31, 2018
COSA File No. W217343

Dear Assistant Attorney General:

May 31, 2018, the City of San Antonio received a public information request from Margie Lopez, which requested information related to a specified incident [Attachment 1]. On June 14th, the city sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [Attachment 2]. By this Request for a Ruling, the city now submits a representative sample of the records at issue, and legal argument supporting the application of the exceptions claimed [Attachment 3].

Arguments and Authorities

A. Section 552.103(a) (Pending Civil Litigation)

Section 552.103(a) protects from disclosure "information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party ..." On the same date the Public Information Act request was submitted, the same law office sent a letter to the City of San Antonio entitled "Notice of Claim Pursuant to the Texas Tort Claims Act" [Attachment 4]. The Notice of Claim relates to information that is documented in or related to the information that has been requested. No documents have been released at this time through the civil discovery process.

B. Section 552.108(a)(2)(Closed Case, No Conviction)

The requested information is related to a closed criminal investigation. The investigation did not result in a conviction or deferred adjudication. The city believes, then, that the requested

information is excepted from required disclosure by section 552.108(a)(2) of the Texas Government Code.

C. Section 552.101 (Confidential Information)(Police Personnel File)

Section 552.101 excepts information from disclosure if it is considered confidential by law. The employment of sworn members of the SAPD is governed by chapter 143 of the Texas Local Government Code. Subsection 143.089(g) of that chapter prohibits the release of the department files of those employees subject to chapter 143. As is required by subsection 143.089(g), a copy of this request has been forwarded to the San Antonio Fire Fighters and Police Officers Civil Service Commission. The information in the Civil Service file will be released to requestor. The city believes that, in light of subsection 143.089(g), section 552.101 of the Texas Government Code prohibits the release of the attached requested information, which is maintained in the San Antonio Police Department personnel file.

D. Section 552.101 (Confidential Information)(Crash Report)

The public personnel file of a San Antonio Police officer contains a crash report (CR3). The requestor did not specifically request this report, and is not a person listed under Transportation Code Section 550.065(c). As such, this information is protected from disclosure.

E. Section 552.101 (Common Law Privacy)

The information is protected from disclosure under the principles of common law privacy. This information is protected under *Indus. Found. V. Tex. Indus. Accident Bd.*, 540 S.W. 2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The attachment contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and of no legitimate concern to the public.

F. Section 552.101 (DPPA)

The requested information contains information protected by section 730.004 of the Texas Transportation Code, which provides that "an agency may not disclosure personal information about any person obtained by the agency in connection with a motor vehicle record." Tex. Transp. Code § 730.004. "Personal information" includes a person's name, address, and driver identification number, address (but not the zip code), telephone number, and medical or disability information. *Id.* § 730.003(6). The Texas Department of Public Safety ("DPS") is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). San Antonio Police Department ("SAPD") officers obtain personal information from DPS to assist the city in carrying out its law enforcement functions. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). As part of the law enforcement functions performed by SAPD officers, they routinely copy and paste this personal information into the comments field of Call For Service sheets and Incident Detail Reports. An authorized recipient of personal information may not re-disclose the personal information and to do so is

a misdemeanor offense. *Id.* § 730.013(a), (d). The City believes, then, that certain details within the reports are excepted from required disclosure by section 552.101 of the Texas Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

G. Section 552.1085 (Sensitive Crime Scene Image)

The requested information consists of, or contains, sensitive crime scene images. Section 552.1085 of the Texas Government Code provides, in part, that “a sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.” *See* Tex. Gov’t Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, which depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). The City believes, then, that certain images and video clips within the requested information are excepted from required disclosure by section 552.1085 of the Texas Government Code.

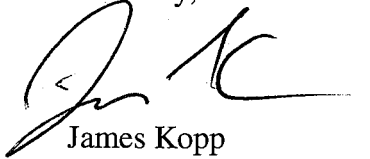
H. Section 552.101 (Family Code Sec. 58.008)(Juvenile Suspect)

An Internal Affairs file contains a report and video from Walmart which involves a child shoplifting. There is also a police report related to this incident. Therefore, the requested information is contained in a file maintained by the San Antonio Police Department. It involves allegations of delinquent conduct or conduct indicating a need for supervision being committed by a juvenile who was, at the time of the incident at issue, ten years of age or older and younger than seventeen years of age. Section 58.008 of the Texas Family Code makes reports related to such matters confidential. The City believes, then, that the requested information is excepted from required disclosure by section 552.101 of the Texas Government Code in conjunction with section 58.008(b) of the Texas Family Code.

Conclusion

For the reasons set forth in this letter, the city seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,



James Kopp
Assistant City Attorney

cc: Margie Lopez

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W217343-053118

Date Submitted: 5/31/2018 12:44:32 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/14/2018 8:00:00 AM

Requestor:

Margie Lopez

Maloney & Campolo

926 S. Alamo

San Antonio, TX 78205

210-922-2200

Information Requested:

Describe the document(s) you are requesting: Re: Freedom of Information Request Our

Client: Razavi, Walter as next friend of S.E.R. a minor Date of Incident: January 27, 2018 Type of Incident: Welfare Check SAPD CASE NO: SAPD 18018451 Your Employees: SAPD Officer Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982 To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), please accept this letter as our request for copies of the 911 tapes, any and all rulings, decisions, findings, conclusions, investigation reports, crash report, witness statements, CID Investigation to include: inspections, analysis, policies and procedures, photographs, videotapes, personnel files of the following: San Antonio Police Officer Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982, and other documentation prepared by, or in the possession of the San Antonio Police Department. Should a prepayment be required, please fax or mail your request to this office so that we may expedite a prepayment to you.

Attachment 1

W217343-053118 - Police Records Request**Police Records Request Details**

Police Records Request Details

I agree to receive the basic public information related to this incident: Yes

I am requesting a traffic accident report: No

Describe the document(s) you are requesting: Re: Freedom of Information Request
Our Client: Razavi, Walter as next friend of S.E.R. a minor
Date of Incident: January 27, 2018
Type of Incident: Welfare Check
SAPD CASE NO: SAPD 18018451
Your Employees: SAPD Officer Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), please accept this letter as our request for copies of the 911 tapes, any and all rulings, decisions, findings, conclusions, investigation reports, crash report, witness statements, CID Investigation to include: inspections, analysis, policies and procedures, photographs, videotapes, personnel files of the following: San Antonio Police Officer Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982, and other documentation prepared by, or in the possession of the San Antonio Police Department.

Should a prepayment be required, please fax or mail your request to this office so that we may expedite a prepayment to you.

Preferred Method to Receive Documents: Electronic by Email Requestor is responsible for all postage fees.

Phone number used to dial 911:

Date of Incident: 1/27/2018

Time of Incident: 2:59 a.m. Please specify AM or PM

Location of Incident: 13627 Bluff Circle, San Antonio, TX 78216 Specific address or the highway or street where the incident occurred

Incident Case Number: SAPD18018451 Please provide the incident case number if known

****The following section ONLY applies if you are requesting a traffic accident report.***

The San Antonio Police Department must obtain the following information in order to determine if you are entitled to a full and complete crash report in accordance with Texas Transportation Code 550.065(c)(4), effective 06/18/2015.

Persons or entities not listed under 550.065(c)(4) may only receive a crash report with redactions made in accordance with 550.065(f)(2).

Please select which of the below listed items apply to you in relationship to the crash report you are requesting.
Please be prepared to provide a valid government issued identification card, driver's license, and/or other documentation.

I am the driver or any other person involved in the accident.: No

I am the authorized representative
of any person involved in the
accident.: Yes

Razavi, Walter as next friend of S.E.R. a minor *Please list name of your client*

I am the employer, parent, or legal
guardian of a driver involved in the
accident.: No

Please list name of driver

I am the owner of a vehicle or
property damaged in the accident.: No

Please provide basic vehicle or property description

I am a person who has established
financial responsibility for a vehicle
involved in the accident.: No

I am currently a representative or
employee of an insurance company
that issued an insurance policy
covering a vehicle or any person
involved in the accident.: No

I am current a person under
contract to provide claims or
underwriting information to a person
or entity described in the preceding
two items.: No

I am currently a representative or
employee of a radio station,
television, or newspaper.: No

I am a person or entity who may sue
because of death resulting from the
accident.: No

I do not fall within any of the above
categories. I am requesting a
redacted crash report.: No

Perjury is a Class A misdemeanor under Texas Penal Code 37.02 and punishable by a fine not to exceed \$4,000, up to a year confinement in jail, or both such fine and confinement.

I agree: I declare under penalty of perjury that the foregoing answers are true and correct. |

Internal Information Only:

Coordinator: Linda Flores

Documents Delivered By:

High Profile Request:

Taskforce:

CPA:

Payment Information:

Amount of Payment:

Date Payment Received:

Legal Information:

AG ID Number:

Date Sent to AG:

Exceptions Argued:

AG Ruling Requested:

Cost Estimate Information:

Cost Estimate Letter Amount: \$0.00

Cost Estimate Letter Sent: No

Notes

| Note | Created | Modified |
|---|--|--|
| investigative packet requested from Edward. | 6/4/2018 10:09:00 AM by Jennifer Perez | 6/4/2018 10:09:00 AM by Jennifer Perez |
| BWC retained. | | |
| 911-audio requested. | | |
| photos requested from lab. | | |
| COBAN is retained. | | |
| jp | | |

Message History

Date

On 6/14/2018 11:12:07 AM, Katie Griffin wrote:
Dear Margie Lopez:

The City of San Antonio is seeking to withhold some or all of the information you have requested and has sought a decision from the Texas Attorney General's Office on the applicability of certain exceptions, pursuant to section 552.301 of the Texas Government Code. Please see attached a copy of the City's correspondence with the Attorney General's Office.

Sincerely,

Katie Griffin
San Antonio Police Department
Records Office

Date

On 5/31/2018 12:44:33 PM, System Generated Message:
Confirmation Message sent to: **Margie Lopez**
Subject: Police Records Request :: W217343-053118
Body: Dear M Lopez:

Thank you for your interest in public records of the City of San Antonio. Your request has been received and is being processed in accordance with Chapter 552 of Texas Government Code, the Public Information Act. Your request was received in this office on 5/31/2018 and given the reference number W217343-053118 for tracking purposes.

Your request will be forwarded to the relevant City department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question. PLEASE NOTE: The Texas Public Information Act does not require a governmental body to create new information, to do legal research, or to answer questions.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Open Records Center.

<http://www.sanantonio.gov/opengovernment>

City of San Antonio

On 5/31/2018 12:44:33 PM, Margie Lopez wrote:
Request was created by customer

Request Details

Reference No: W217343-053118
Create Date: 5/31/2018 12:44 PM
Update Date: 6/14/2018 11:12 AM
Completed/Closed: No
Required Completion Date: 6/14/2018

Status: Assembling Records
Priority: Medium
Assigned Dept: Police
Assigned Staff: Jennifer Perez

Customer Name: Margie Lopez
Email Address:
Phone: 2109222200

Source: Web

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

June 14, 2018

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

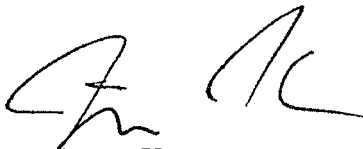
Re: Request for an Open Records Decision
Our File No.: W217343

Dear Sirs:

On May 31, 2018, the city of San Antonio received an open records request from Margie Lopez. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,

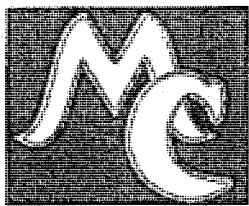


James Kopp
Assistant City Attorney

cc: Margie Lopez

Via E- Mail (without enclosures)

Attachment 2



LAW OFFICES
OF
MALONEY & CAMPOLO, L.L.P.

TIM MALONEY*
tmaloney@maloneyandcampolo.com

PAUL E. CAMPOLO*
pcampolo@maloneyandcampolo.com

ERIC CAMPOLO
ecampolo@maloneyandcampolo.com

VIA CERTIFIED MAIL:

May 31, 2018

CL 18723929

Police 170208

Hon. Mayor Ron Nirenberg, P.O. Box 839966, San Antonio, TX 78283-3966
RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0064

Ms. Sheryl L. Sculley, City Manager, P.O. Box 839966, San Antonio, TX 78283-3966
RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0071

Leticia M. Vacek, TRMC, CMC, City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966
RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0088

William A. McManus - **RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0095**
Chief of San Antonio Police and Director of Police Department
City of San Antonio Police Dept.
315 So. Santa Rosa
San Antonio, Texas 78207

Roland Pacheco #594- **RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0101**
Employee/ Police Officer, City of San Antonio, San Antonio Police Dept.
315 So. Santa Rosa
San Antonio, Texas 78207

Officer Estrada #71- **RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0118**
Employee/ Police Officer, City of San Antonio, San Antonio Police Dept.
315 So. Santa Rosa
San Antonio, Texas 78207

Cadet Neri #982- **RETURN RECEIPT REQUESTED 7017 1070 0000 5121 0125**
Employee/ Police Officer, City of San Antonio, San Antonio Police Dept.
315 So. Santa Rosa
San Antonio, Texas 78207

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
2018 JUN -4 AM 9:56

NOTICE OF CLAIM PURSUANT TO THE TEXAS TORT CLAIMS ACT
TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101, et. seq.

RE: Razavi, Walter as next friend of S.E.R. a minor vs. The City of San Antonio; William McManus, Chief of the San Antonio Police Department, Individually and, Officer, Roland Pacheco #594; Officer Estrada #71; and Cadet Neri #982, Individually; In the United States District Court of Texas, Western Division.

CITY OF SAN ANTONIO
RISK MANAGEMENT

926 S. Alamo, San Antonio, Texas 78205
Telephone (210)922-2200 • Facsimile (210)923-1313

www.maloneyandcampolo.com

*Licensed in Illinois

Attachment 4

RECEIVED

To Whom It May Concern:

Dear Sir or Ma'am:

Please allow this letter to serve as Notice pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101 of Plaintiff's intent to pursue a claim under the Texas Tort Claims Act. Although such notice is not required, as *The City of San Antonio; William McManus, Chief of the San Antonio Police Department, Individually and, Officer Roland Pacheco #594 (hereinafter Officer Pacheco); Officer Estrada #71 (hereinafter Officer Estrada); and Cadet Neri #982 (hereinafter Cadet Neri), Individually* (hereinafter collectively "Defendants") had actual notice of the incident made the basis of this claim below [see TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101(c)], Plaintiff nonetheless is providing this written notice.

In accordance with TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101(c)], and Charter of the City of San Antonio, Plaintiff would state the following:

TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101(a) – Notice period

Plaintiff has timely met the notice requirements, as Defendants had *actual notice* within 24-hours of the incident giving rise to the claim; both civil and criminal actions were initiated within 90 days and 24 hours, respectively; and this written notice is being provided within six months of the incident giving rise to the claim occurred.

TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101(a)(1) – Damage or Injury Claimed

Plaintiff was injured as a result of the actions of Police Officer's *Pacheco; Officer Estrada; and Cadet Neri's* negligence. On January 27, 2018 while responding to a welfare check, at the residence of Kirsten Kloppe, Officer Pacheco, Officer Estrada and Cadet Neri, were negligent in their actions that resulted in deadly force. In particular, Officer Estrada used tangible personal property (service weapon) issued to her by the San Antonio Police Department by shooting and killing Kirsten Kloppe.

Officer Pacheco, Officer Estrada and Cadet Neri's actions and negligent use of these items and actions caused Plaintiff/Claimant to suffer physical and mental injuries.

TEXAS CIVIL PRACTICE AND REMEDIES CODE §101.101(a)(2)(3) – Time and Place of Incident

The incident subject of this claim occurred on Saturday, January 27, 2018 at 2:59 a.m. at 13627 Bluff Circle, in San Antonio, Bexar County Texas 78216. As Defendants are on actual notice, Plaintiff/Claimant would refer them to their records/documents and the witness statements in their possession.

CITY OF SAN ANTONIO
RISK MANAGEMENT

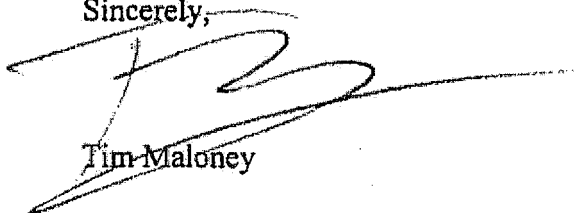
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CITY OF SAN ANTONIO
CITY CLERK
JUN - 1 AM 9:56

Plaintiff further asserts that liability exists under the TEXAS TORT CLAIMS ACT, CIV. PRAC. R. CODE §101 *et. seq.*, insofar as Defendants are a “governmental unit”, as defined therein and, as such, are liable in damages for the following acts and omissions:

1. negligent use of tangible City property (a service weapon); and

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Maloney', with a long horizontal flourish extending to the right.

Tim Maloney

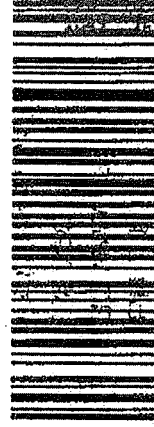
TM:mcl
Enclosures

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CITY OF SAN ANTONIO
CITY CLERK
2018 JUN -4 AM 9:56

LAW OFFICES OF MALONEY & CAMPOLO, L.L.P.
926 S. Alamo
San Antonio, Texas 78205

2010 JUN - 4 AM 9:56

CERTIFIED MAIL



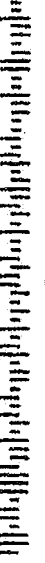
7017 1070 0000 5121 00

UNITED STATES POSTAGE

5005.47

Leticia M. Vacek, TRMC, CMC, City Clerk
P.O. Box 839966
San Antonio, TX 78283-3966

78283-396666



DAVID A. ESCAMILLA
COUNTY ATTORNEY

DAN HAMRE
FIRST ASSISTANT

SHERINE E. THOMAS
EXECUTIVE ASSISTANT

314 W. 11TH STREET
GRANGER BLDG., 5TH FLOOR
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



RECEIVED

JUN 21 2018

OPEN RECORDS DIVISION

TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

JENNIFER KRABER

ANN-MARIE SHEELY

C.J. BRANDT, JR.

† Member of the College
of the State Bar of Texas

June 21, 2018

AR-725516-18
725516

Hand Delivered

Mr. Justin Gordon, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request from **Anne Kleinert** received on **June 7, 2018**—Request for Ruling

Dear Mr. Gordon:

The Travis County District Attorney's Office ("TCDA") received a request for information from Anne Kleinert on June 7, 2018. TCDA believes that the requested information may be excepted from disclosure under Sections 552.101 through 552.156 of the Government Code. We are submitting this letter as a request for a determination under Section 552.301 of the Government Code that this information is so excepted.

A copy of the request for information is enclosed. Copies of representative samples and arguments for withholding part of the requested information will be forwarded to your office within the time frame requested by Section 552.301 (i.e., 15 business days from the request receipt date).

By copy of this letter, we are notifying the requestor that TCDA wishes to withhold the requested information and have asked for a decision from the Attorney General about whether the information is within an exception to public disclosure. If you have any questions, please contact me at (512) 854-9176, or by e-mail at ann-marie.sheely@traviscountytexas.gov.

Sincerely,

Ann-Marie Sheely
Assistant County Attorney

Enclosures: Request email

c:

Nicole Waggoner, Paralegal, TCDA (via email, without enclosures)

Anne Kleinert (via email to
10910 Medfield Ct.
Austin, TX 78739

without enclosures)

Ramiro Gonzalez

From: Anne Kleinert

Sent: Thursday, June 7, 2018 11:23:27 AM (UTC-06:00) Central Time (US & Canada)

To: DAAOpenRecordsRequests

Subject: {EXTERNAL} FOIA request

Please see attached request

Anne Kleinert
10910 Medfield Ct.
Austin, TX 78739

June 7, 2018

Travis County District Attorney
Open Records Request

To whom it may concern:

Under the **Texas Public Information Act, §6252-17a et seq.**, I am requesting the following documents and information from your department:

- The Kleinert file, including but not limited to **all** materials written, electronic, video, audio etc. related to the prosecution and appeals of Charles P. Kleinert III dob

The Texas Public Information Act requires that you "promptly produce" the requested records unless, within 10 days, you have sought an Attorney General's Opinion. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

Anne Kleinert
(512) 870-7245

DAVID A. ESCAMILLA
COUNTY ATTORNEY

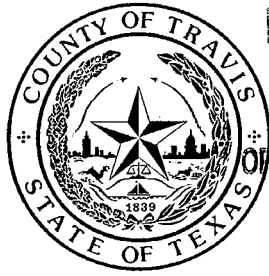
DAN HAMRE
FIRST ASSISTANT

SHERINE E. THOMAS †
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
GRANGER BLDG., 5TH FLOOR
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



RECEIVED TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

JUN 27 2018

OPEN RECORDS DIVISION

BARBARA J. WILSON

JENNIFER KRABER

ANN-MARIE SHEELY

C.J. BRANDT, JR.

† Member of the College
of the State Bar of Texas

June 27, 2018

725516
725871

Hand Delivered

Mr. Justin Gordon, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request from **Anne Kleinert** received on **June 7, 2018**—Supplemental Brief
(Document ID 602257-1)

Dear Mr. Gordon:

On June 21, 2018, we submitted a letter to your office on behalf of the Travis County District Attorney ("TCDA"), asking for a ruling on this request from Anne Kleinert. The document number for this request was 602257-1. This is our supplemental brief for the ruling request and it explains the specific exceptions in Government Code chapter 552 that we believe control the TCDA's obligation to release the requested information. Requestor seeks "the Kleinert file, including but not limited to all materials written, electronic, video, audio etc. related to the prosecution and appeals of Charles P. Kleinert III...." Below is our supplemental brief setting forth the exceptions to disclosure of this information.

By copy of this letter, we are informing the requestor that the TCDA wishes to withhold the requested information, and that we are asking for a decision from your office. We have attached representative samples of the responsive information and assert that the information may be withheld for the reasons set forth in this brief.

The responsive information may be withheld under Government Code section 552.108(a)(2).

Government Code section 552.108 states in relevant part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

The request seeks records related to a criminal case with the TCDA regarding *State v. Kleinert*. The responsive information pertains to an investigation and prosecution of a TCDA case that did not result in a final disposition or deferred adjudication. Accordingly, we assert that all of the responsive information may be withheld under Government Code section 552.108(a)(2). We have provided a representative sample of the responsive information for your review, marked “552.108(a)(2).”

Some of the responsive information is excepted from disclosure under section 552.108 – prosecutor work-product

Section 552.108 of the Government Code states in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

.....

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Additionally, some of the responsive information was created or assembled by prosecutors or their staff in anticipation of or in the course of preparing for criminal litigation. These records contain internal communications, internal case entries notes, file notes/compilations/checklists, participant case information, research, memos and reports of the prosecutors and staff of the TCDA in preparation of criminal litigation. These records were generated and compiled by prosecutors and TCDA staff in preparation of criminal litigation which was anticipated by the TCDA at the time these internal records, communications, notes, memos and recommendations were made. Additionally, prosecutor notes, recommendations and other internal correspondence among the

attorneys and staff/representatives of the TCDA, would also reveal their mental impressions, opinions, conclusions, and legal theories regarding the case.

Accordingly, we believe that this information is excepted from disclosure under subsections (a)(4) and (b)(3) of section 552.108 of the Government Code because the information was prepared by a prosecutor or their representative in the anticipation of or in the course of preparing for criminal litigation, and would also reveal the TCDA's legal strategies in preparing for litigation, as well as their mental impressions, opinions, conclusions, and legal theories. We have included representative samples for your review, indicated as "prosecutor work product."

Some of the responsive information is a record of the judiciary and is not subject to release under the Public Information Act.

The Texas Public Information Act ("the Act") applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In addition, information that is "collected, assembled, or maintained . . . for the judiciary" by a governmental body acting as an agent of the judiciary is not subject to the Act. *Id.*; *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981). Your office has determined that a grand jury is part of the judiciary for purposes of the Act, and therefore, not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for the grand jury are considered records in the constructive possession of the grand jury and therefore are not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Here, some of the responsive information was produced at the direction of the court for purposes of grand jury matters, and held by the TCDA as an agent of the grand jury. These records, including transcripts and information subject to and obtained through a grand jury subpoena and obtained by the TCDA, acting at the direction of the grand jury, are not subject to release under the Act. Accordingly, this information is not subject to the Act and may be withheld from disclosure. We have sent a representative sample for your review, indicated as "grand jury."

Photos taken as part of the autopsy must be withheld in their entirety under Government Code section 552.101 and Code of Criminal Procedure article 49.25, section 11.

Government Code section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Code of Criminal Procedure article 49.25, section 11. Article 49.25, section 11 provides in relevant part:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

In this case, some of the responsive information involves photographs taken during an autopsy. Pursuant to Criminal Procedure article 49.25, section 11, these autopsy photographs are confidential by law and must be withheld under Government Code section 552.101, in accordance with the Code of Criminal Procedure. Although the autopsy photos may be subject to release pursuant to a subpoena, they are not subject to release pursuant to a public information request. We have included representative samples of the autopsy photos, indicated as “autopsy photos.”

Some of the requested information must be withheld under Government Code section 552.101- Criminal History Record.

We believe this request also implicates Government Code section 552.101, which excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Part of the TCDA’s criminal file in this case contains reports that detail the criminal history of the defendant. The report is taken from the state criminal history database. Specifically, the information consists of criminal history record information (“CHRI”) obtained from the National Crime Information Center (“NCIC”) and the Texas Crime Information Center (“TCIC”). Such information is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. 28 C.F.R. §20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Further, Section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety (the “DPS”) is confidential. *See* Gov’t Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Thus, we believe that any responsive criminal history record information that was obtained from the NCIC and TCIC networks and Department

of Public Safety must be withheld from disclosure under section 552.101 of the Government Code. We have marked these records with the notation "CHRI."

In conclusion, we ask that you rule on whether the enclosed information must be released to the requestor. If you have any questions, please contact me at (512) 854-9176 or by e-mail at ann-marie.sheely@traviscountytexas.gov.

Sincerely,



Ann-Marie Sheely
Assistant County Attorney

c:

Nicole Waggoner, Paralegal
Travis County District Attorney's Office
(via email, without enclosures)

Anne Kleinert
10910 Medfield Ct.
Austin, TX 78739
(via email to:

without enclosures)

RECEIVED

JUN 21 2018

CITY OF SAN ANTONIO

OPEN RECORDS DIVISION

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373

Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.

San Antonio, Texas 78207

June 19, 2018

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

AR. 725422-18
725422

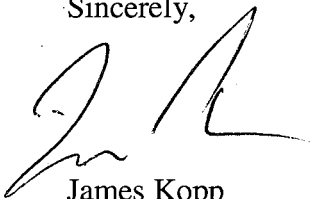
Re: Request for an Open Records Decision
Our File No.: W217984

Dear Sirs:

On June 5, the city of San Antonio received an open records request from Marsha McLeod. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

cc: Marsha McLeod

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W217984-060518

Date Submitted: 6/5/2018 4:42:17 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/19/2018 8:00:00 AM

Requestor:

Marsha McLeod

The Trace

718-964-7656

Information Requested:

Describe the document(s) you are requesting: Pursuant to the Texas Public Information Act, I hereby request the police reports, incident reports, crime reports, arrest reports, and/or any other material associated with the following case numbers:

- 1) SAPD13158445
- 2) SAPD15017421
- 3) SAPD14189372
- 4) SAPD15196184
- 5) SAPD16132160
- 6) SAPD16026633
- 7) SAPD13282283
- 8) SAPD14074953
- 9) SAPD16083743
- 10) SAPD15032022
- 11) SAPD14258569
- 12) SAPD15013681

I am a reporter with The Trace, a 501(c)(3) nonprofit news organization. As a member of the news media, I will be making information obtained from this request available to the general public; I am not requesting it for commercial purposes. I prefer to receive the requested materials in .pdf format via email. In the event that these documents cannot be sent electronically, please send them to: 195 Montague St., 14th Floor Attn: Marsha McLeod, The Trace Brooklyn, N.Y. 10013 In the event that there are fees, I would appreciate if you informed me of the total charges before completing my request. If my request is denied in whole or in part, please cite the applicable statutory exemption. Thank you in advance for your help with this request. If you have any questions, please call me at (718) 964-7656.

RECEIVED

JUN 28 2018

CITY OF SAN ANTONIO

OPEN RECORDS DIVISION

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

725422
726222

June 26, 2018

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling
Requestor: Marsha McLeod
Date request received: June 5, 2018
COSA File No. W217984

Dear Assistant Attorney General:

June 5, 2018, the City of San Antonio received a public information request from Marsha McLeod, which requested information related to twelve police reports [Attachment 1]. On June 19, the city sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [Attachment 2]. By this Request for a Ruling, the city now submits a representative sample of the records at issue, and legal argument supporting the application of the exceptions claimed [Attachment 3].

Arguments and Authorities

Section 552.108(a)(2)(Closed Case, No Conviction)

The requested information is related to a closed criminal investigation. The investigation did not result in a conviction or deferred adjudication. The city believes, then, that the requested information is excepted from required disclosure by section 552.108(a)(2) of the Texas Government Code.

Section 552.101 (Family Code Section 261.201)(Child Abuse)

Section 552.101 of the Act excepts from disclosure information considered to be confidential by law, either constitutional, statutory or by judicial decision. Section 261.201(a) of the Family Code makes confidential the report and investigation of child abuse, including "the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter...." The city submits that the requested information relates to an investigation into possible child abuse. This protects the requested information from disclosure.

Section 552.101 (Family Code Sec. 58.008)(Juvenile Suspect)

The requested information is contained in a criminal investigation file maintained by the San Antonio Police Department. It involves allegations of delinquent conduct or conduct indicating a need for supervision being committed by a juvenile who was, at the time of the incident at issue, ten years of age or older and younger than seventeen years of age. Section 58.008 of the Texas Family Code makes reports related to such matters confidential. The City believes, then, that the requested information is excepted from required disclosure by section 552.101 of the Texas Government Code in conjunction with section 58.008(b) of the Texas Family Code.

Section 552.101 (Common Law Privacy)(Criminal History)

The requested information consists of, or contains, compilations of an individual's criminal history. The doctrine of common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *See US Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989). The City believes, then, that certain details within the requested information are excepted from required disclosure by section 552.101 of the Texas Government Code in conjunction with common-law privacy.

Section 552.101 (Code of Criminal Procedure Art. 49.25, Section 11)

The requested information includes autopsy photographs. This information is protected from disclosure under Texas Code of Criminal Procedure Art. 49.25, Section 11.

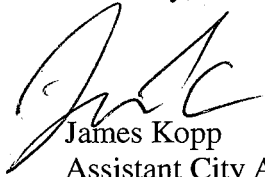
Section 552.101 (DPPA)

The requested information contains information protected by section 730.004 of the Texas Transportation Code, which provides that "an agency may not disclosure personal information about any person obtained by the agency in connection with a motor vehicle record." Tex. Transp. Code § 730.004. "Personal information" includes a person's name, address, and driver identification number, address (but not the zip code), telephone number, and medical or disability information. *Id.* § 730.003(6). The Texas Department of Public Safety ("DPS") is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). San Antonio Police Department ("SAPD") officers obtain personal information from DPS to assist the city in carrying out its law enforcement functions. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). As part of the law enforcement functions performed by SAPD officers, they routinely copy and paste this personal information into the comments field of Call For Service sheets and Incident Detail Reports. An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). The City believes, then, that certain details within the reports are excepted from required disclosure by section 552.101 of the Texas Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

Conclusion

For the reasons set forth in this letter, the city seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Kopp', written over the printed name.

James Kopp
Assistant City Attorney

cc: Marsha McLeod

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W217984-060518

Date Submitted: 6/5/2018 4:42:17 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/19/2018 8:00:00 AM

Requestor:

Marsha McLeod

The Trace

718-964-7656

Information Requested:

Describe the document(s) you are requesting: Pursuant to the Texas Public Information Act, I hereby request the police reports, incident reports, crime reports, arrest reports, and/or any other material associated with the following case numbers:

- 1) SAPD13158445
- 2) SAPD15017421
- 3) SAPD14189372
- 4) SAPD15196184
- 5) SAPD16132160
- 6) SAPD16026633
- 7) SAPD13282283
- 8) SAPD14074953
- 9) SAPD16083743
- 10) SAPD15032022
- 11) SAPD14258569
- 12) SAPD15013681

I am a reporter with The Trace, a 501(c)(3) nonprofit news organization. As a member of the news media, I will be making information obtained from this request available to the general public; I am not requesting it for commercial purposes. I prefer to receive the requested materials in .pdf format via email. In the event that these documents cannot be sent electronically, please send them to: 195 Montague St., 14th Floor Attn: Marsha McLeod, The Trace Brooklyn, N.Y. 10013 In the event that there are fees, I would appreciate if you informed me of the total charges before completing my request. If my request is denied in whole or in part, please cite the applicable statutory exemption. Thank you in advance for your help with this request. If you have any questions, please call me at (718) 964-7656.

Attachment 1

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

June 19, 2018

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

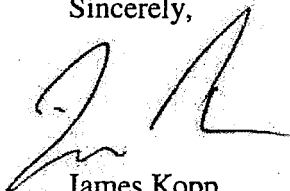
Re: Request for an Open Records Decision
Our File No.: W217984

Dear Sirs:

On June 5, the city of San Antonio received an open records request from Marsha McLeod. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

cc: Marsha McLeod

Via E-Mail (without enclosures)

Attachment 2

RECEIVED

JUN 26 2018

OPEN RECORDS DIVISION

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

June 22, 2018

AR-726290-18

726290

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

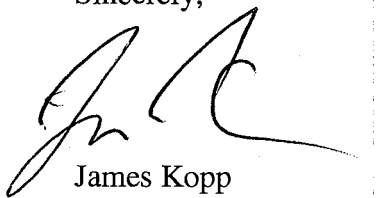
Re: Request for an Open Records Decision
Our File Nos.: WW218447, W218448, W218449, W218451

Dear Sirs:

On June 22, 2018, the city of San Antonio received four related open records request from Byron Miller. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

cc: Byron Miller

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W218447-060818

Date Submitted: 6/8/2018 4:22:10 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: Any police reports involving Charlene Marie Kurkowski (DOB: 12/11/1960). The time period contemplated for this request is between May 18, 2018 and May 18, 2013.



City of San Antonio

Reference Number: W218448-060818

Date Submitted: 6/8/2018 4:25:30 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: The police report involving Officer Andrea Murray #1152 at Baptist Medical Center at 2014 hours on 5-20-18 (SAPD # 18105208).



City of San Antonio

Reference Number: W218449-060818

Date Submitted: 6/8/2018 4:40:53 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: Any of the following concerning the arrest of Charlene Marie Kurkowski on May 17, 2018: a. The police report (SAPD 18102945); b. Body camera footage from the following officers; David Ramos #1675; Christopher Ramos #0300; UEDI Jacob Garcia #2036; and the female officer who conducted the body search of Charlene Kurkowski; c. Patrol Car footage; d. Calls for service; e. Witness statements;



City of San Antonio

Reference Number: W218451-060818

Date Submitted: 6/8/2018 4:50:37 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: Any of the following concerning the detention of Charlene Kurkowski on May 17, 2018 located at 401 S. Frio. St., San Antonio, Texas 78207: a. Video footage of Charlene Kurkowski's cell (#15) between 8pm and 10:30pm; b. Any internal emails, facsimiles, texts, voicemails concerning the death of Charlene Kurkowski; c. Any correspondence to the Bexar County Medical Examiner's office concerning Charlene Kurkowski, deceased; d. Documents evidencing the nursing staff assessment performed at the Detention Center on Charlene Kurkowski; e. Documents evidencing the search conducted by the Detention Center Personnel on Charlene Kurkowski; f. Documents completed to admit Charlene Kurkowski into the Detention Center;

RECEIVED

JUL 03 2018

RECORDS DIVISION

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

726296
727049

June 29, 2018

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling
Requestor: Byron Miller
Date request received: June 8, 2018
COSA File No. W218447, W218448, W218449, W218451

Dear Assistant Attorney General:

June 8, 2018, the City of San Antonio received four related public information requests from Byron Miller, which requested Information related to a person who was found hung in the San Antonio Detention Center, a city facility [Attachment 1]. On June 22nd, the city sent a ten-day letter to your office in connection with the request, which listed the exceptions claimed in this Request for Ruling [Attachment 2]. By this Request for a Ruling, the city now submits a representative sample of the records at issue, and legal argument supporting the application of the exceptions claimed [Attachment 3].

Arguments and Authorities

A. Section 552.103(a) (Reasonably Anticipated Civil Litigation)

Section 552.103(a) protects from disclosure "information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party ..." The requestor, an attorney, noted on his request that he is the representative of the "surviving family of Charlene Kurkowsi, deceased." Ms. Kurkowski was booked into the San Antonio Detention Center, and after a criminal investigation it was determined that she had hung herself in her cell. The City of San Antonio, a subdivision of the State, based upon the nature of the request and the nature of the incident, reasonably believes that litigation is anticipated, and that such litigation is documented in or related to the information that has been requested.

B. Section 552.108(a)(2)(Closed Case, No Conviction)

The requested information is related to a closed criminal investigation. The investigation did not result in a conviction or deferred adjudication. The city believes, then, that the requested

information is excepted from required disclosure by section 552.108(a)(2) of the Texas Government Code.

C. Section 552.101 (Confidential Information)(Gov't Code Sections 418.176 – 182)

Section 552.101 of the Public Information Act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Sections 418.176 through 481.182 of the Government Code provide that certain information is confidential if it is maintained to prevent, detect or investigate an act of terrorism or related criminal activity. Section 418.176 relates to staffing requirements and tactical plans, and Section 418.181 relates to the "technical details of particular vulnerabilities of critical infrastructure to an act of terrorism."

The requested items include footage from the San Antonio Detention Center. This facility is where all persons arrested for all criminal offenses committed in Bexar County are taken before processing and release, including to jail and on bond. Offenders housed in this facility include those arrested for Capital Murder, through those arrested for Class B and Class C offenses. Release of this information would place employees, detention personnel, peace officers, nurses, judges and assistant district attorneys at an extreme risk of danger from possible domestic terrorism, and the general public from the risks associated with escape by arrested persons. Release of this information would detailed information about this facility, as well as the location of security surveillance cameras. *See* ORR2015-18169. It should therefore be protected from release.

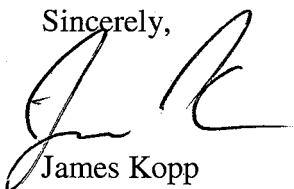
D. Section 552.101 (Occupations Code Section 1701.661(a))(Body Camera)

Section 1701.661(a) provides that in requesting body camera information, a member of the public is required to provide the date and approximate time of the recording, the specific location of the recording and the name of one or more persons who are the subject of the recording. Requestor has not provided this information.

Conclusion

For the reasons set forth in this letter, the city seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,



James Kopp
Assistant City Attorney

cc: Byron Miller

Via E- Mail (without enclosures)



City of San Antonio

Reference Number: W218447-060818

Date Submitted: 6/8/2018 4:22:10 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: Any police reports involving Charlene Marie Kurkowski (DOB: 12/11/1960). The time period contemplated for this request is between May 18, 2018 and May 18, 2013.

Attachment



City of San Antonio

Reference Number: W218447-060818

Date Submitted: 6/8/2018 4:22:10 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Request:

| | |
|---|--|
| I agree to receive the basic public information related to this incident | No |
| I am requesting a traffic accident report | No |
| Describe the document(s) you are requesting: | Any police reports involving Charlene Marie Kurkowski (DOB: 12/11/1960). The time period contemplated for this request is between May 18, 2018 and May 18, 2013. |
| Preferred Method to Receive Documents | Electronic by Email |
| Phone number used to dial 911 | |
| Date of Incident | |
| Time of Incident | |
| Location of Incident | |
| Incident Case Number | |
| I am the driver or any other person involved in the accident. | No |
| I am the authorized representative of any person involved in the accident. | Yes |
| | Surviving family of Charlene Kurkowski, deceased |
| I am the employer, parent, or legal guardian of a driver involved in the accident. | No |

| | |
|------------------------------|------------------------|
| Reference No: | W218447-060818 |
| Request Status: | Assembling Records |
| Service Request Type: | Police Records Request |
| Priority: | Medium |
| Assigned To: | Lorie Schnuriger |
| Email: | |
| Name: | Byron Miller |
| Phone: | 210-228-0400 |
| Address: | 322 W. Woodlawn Ave. |
| City: | San Antonio |
| State/Province: | TX |
| Zip/Postal Code: | 78212 |
| Create Date: | 6/8/2018 4:22:10 PM |
| Update Date: | 6/22/2018 2:54:08 PM |
| Source: | Web |

I am the owner of a vehicle or property damaged in the accident. No

I am a person who has established financial responsibility for a vehicle involved in the accident. No

I am currently a representative or employee of an insurance company that issued an insurance policy covering a vehicle or any person involved in the accident. No

I am current a person under contract to provide claims or underwriting information to a person or entity described in the preceding two items. No

I am currently a representative or employee of a radio station, television, or newspaper. No

I am a person or entity who may sue because of death resulting from the accident. No

I do not fall within any of the above categories. I am requesting a redacted crash report. No

I agree I declare under penalty of perjury that the foregoing answers are true and correct.

Internal Information Only

Coordinator Linda Flores

Documents Delivered By

High Profile Request

Taskforce

CPA

Payment Information

Amount of Payment

Date Payment Received

Legal Information

AG ID Number

Date Sent to AG

Exceptions Argued

AG Ruling Requested

Cost Estimate Information

Cost Estimate Letter Amount

Cost Estimate Letter Sent No



City of San Antonio

Reference Number: W218448-060818

Date Submitted: 6/8/2018 4:25:30 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: The police report involving Officer Andrea Murray #1152 at Baptist Medical Center at 2014 hours on 5-20-18 (SAPD # 18105208).



City of San Antonio

Reference Number: W218448-060818

Date Submitted: 6/8/2018 4:25:30 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Request:

| | |
|---|---|
| I agree to receive the basic public information related to this incident | No |
| I am requesting a traffic accident report | No |
| Describe the document(s) you are requesting: | The police report involving Officer Andrea Murray #1152 at Baptist Medical Center at 2014 hours on 5-20-18 (SAPD # 18105208). |
| Preferred Method to Receive Documents | Electronic by Email |
| Phone number used to dial 911 | |
| Date of Incident | 05/20/2018 |
| Time of Incident | |
| Location of Incident | 111 Dallas St, San Antonio, TX 78205 |
| Incident Case Number | 18105208 |
| I am the driver or any other person involved in the accident. | No |
| I am the authorized representative of any person involved in the accident. | Yes Surviving family of Charlene Kurkowski, deceased |
| I am the employer, parent, or legal guardian of a driver involved in the accident. | No |

| | |
|------------------------------|------------------------|
| Reference No: | W218448-060818 |
| Request Status: | Assembling Records |
| Service Request Type: | Police Records Request |
| Priority: | Medium |
| Assigned To: | Lorie Schnuriger |
| Email: | |
| Name: | Byron Miller |
| Phone: | 210-228-0400 |
| Address: | 322 W. Woodlawn Ave. |
| City: | San Antonio |
| State/Province: | TX |
| Zip/Postal Code: | 78212 |
| Create Date: | 6/8/2018 4:25:30 PM |
| Update Date: | 6/22/2018 2:58:35 PM |
| Source: | Web |



City of San Antonio

Reference Number: W218449-060818

Date Submitted: 6/8/2018 4:40:53 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: Any of the following concerning the arrest of Charlene Marie Kurkowski on May 17, 2018: a. The police report (SAPD 18102945); b. Body camera footage from the following officers; David Ramos #1675; Christopher Ramos #0300; UEDI Jacob Garcia #2036; and the female officer who conducted the body search of Charlene Kurkowski; c. Patrol Car footage; d. Calls for service; e. Witness statements;



City of San Antonio

Reference Number: W218449-060818

Date Submitted: 6/8/2018 4:40:53 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Request:

| | |
|---|--|
| I agree to receive the basic public information related to this incident | No |
| I am requesting a traffic accident report | No |
| Describe the document(s) you are requesting: | Any of the following concerning the arrest of Charlene Marie Kurkowski on May 17, 2018: a. The police report (SAPD 18102945); b. Body camera footage from the following officers; David Ramos #1675; Christopher Ramos #0300; UEDI Jacob Garcia #2036; and the female officer who conducted the body search of Charlene Kurkowski; c. Patrol Car footage; d. Calls for service; e. Witness statements; |
| Preferred Method to Receive Documents | Electronic by Email |
| Phone number used to dial 911 | |
| Date of Incident | 05/17/2018 |
| Time of Incident | |
| Location of Incident | |
| Incident Case Number | |
| I am the driver or any other person involved in the accident. | No |
| I am the authorized representative of any person involved in the | Yes |

| | |
|------------------------------|------------------------|
| Reference No: | W218449-060818 |
| Request Status: | Assembling Records |
| Service Request Type: | Police Records Request |
| Priority: | Medium |
| Assigned To: | Lorie Schnuriger |
| Email: | |
| Name: | Byron Miller |
| Phone: | 210-228-0400 |
| Address: | 322 W. Woodlawn Ave. |
| City: | San Antonio |
| State/Province: | TX |
| Zip/Postal Code: | 78212 |
| Create Date: | 6/8/2018 4:40:53 PM |
| Update Date: | 6/22/2018 3:00:58 PM |
| Source: | Web |

Date Payment Received

Legal Information

AG ID Number

Date Sent to AG

Exceptions Argued

AG Ruling Requested

Cost Estimate Information

**Cost Estimate Letter
Amount**

Cost Estimate Letter Sent No



City of San Antonio

Reference Number: W218451-060818

Date Submitted: 6/8/2018 4:50:37 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Information Requested:

Describe the document(s) you are requesting: Any of the following concerning the detention of Charlene Kurkowski on May 17, 2018 located at 401 S. Frio. St., San Antonio, Texas 78207: a. Video footage of Charlene Kurkowski's cell (#15) between 8pm and 10:30pm; b. Any internal emails, facsimiles, texts, voicemails concerning the death of Charlene Kurkowski; c. Any correspondence to the Bexar County Medical Examiner's office concerning Charlene Kurkowski, deceased; d. Documents evidencing the nursing staff assessment performed at the Detention Center on Charlene Kurkowski; e. Documents evidencing the search conducted by the Detention Center Personnel on Charlene Kurkowski; f. Documents completed to admit Charlene Kurkowski into the Detention Center;



City of San Antonio

Reference Number: W218451-060818

Date Submitted: 6/8/2018 4:50:37 PM

Request Submitted via: Online FOIA Submission

10th day deadline: 6/22/2018 8:00:00 AM

Requestor:

Byron Miller

Maloney Law Group

322 W. Woodlawn Ave.

San Antonio, TX 78212

210-228-0400

Request:

I agree to receive the basic public information related to this incident No

I am requesting a traffic accident report No

Describe the document(s) you are requesting: Any of the following concerning the detention of Charlene Kurkowski on May 17, 2018 located at 401 S. Frio. St., San Antonio, Texas 78207: a. Video footage of Charlene Kurkowski's cell (#15) between 8pm and 10:30pm; b. Any internal emails, facsimiles, texts, voicemails concerning the death of Charlene Kurkowski; c. Any correspondence to the Bexar County Medical Examiner's office concerning Charlene Kurkowski, deceased; d. Documents evidencing the nursing staff assessment performed at the Detention Center on Charlene Kurkowski; e. Documents evidencing the search conducted by the Detention Center Personnel on Charlene Kurkowski; f. Documents completed to admit Charlene Kurkowski into the Detention Center;

Preferred Method to Receive Documents Electronic by Email

Phone number used to dial 911

Date of Incident 05/17/2018

Time of Incident

Location of Incident 401 S. Frio St., San Antonio, Texas 78207

Incident Case Number

Reference No: W218451-060818
Request Status: Assembling Records
Service Request Type: Police Records Request
Priority: Medium
Assigned To: Lorie Schnuriger
Email:
Name: Byron Miller
Phone: 210-228-0400
Address: 322 W. Woodlawn Ave.
City: San Antonio
State/Province: TX
Zip/Postal Code: 78212
Create Date: 6/8/2018 4:50:37 PM
Update Date: 6/22/2018 3:03:58 PM
Source: Web

I am the driver or any other person involved in the accident. No

I am the authorized representative of any person involved in the accident. Yes

Rep for the surviving family of Charlene Kurkowski, deceased

I am the employer, parent, or legal guardian of a driver involved in the accident. No

I am the owner of a vehicle or property damaged in the accident. No

I am a person who has established financial responsibility for a vehicle involved in the accident. No

I am currently a representative or employee of an insurance company that issued an insurance policy covering a vehicle or any person involved in the accident. No

I am current a person under contract to provide claims or underwriting information to a person or entity described in the preceding two items. No

I am currently a representative or employee of a radio station, television, or newspaper. No

I am a person or entity who may sue because of death resulting from the accident. No

I do not fall within any of the above categories. I am requesting a redacted crash report. No

I agree I declare under penalty of perjury that the foregoing answers are true and correct.]

Internal Information Only

Coordinator Linda Flores

Documents Delivered By

High Profile Request

Taskforce

CPA

Payment Information

Amount of Payment

Date Payment Received

Legal Information

AG ID Number

Date Sent to AG

Exceptions Argued

AG Ruling Requested

**Cost Estimate
Information**

**Cost Estimate Letter
Amount**

**Cost Estimate Letter
Sent**

No

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY

James Kopp, Assistant City Attorney

Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373

Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

June 22, 2018

Open Records Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

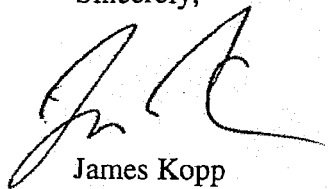
Re: Request for an Open Records Decision
Our File Nos.: WW218447, W218448, W218449, W218451

Dear Sirs:

On June 22, 2018, the city of San Antonio received four related open records request from Byron Miller. A copy of that request is enclosed. The city seeks to withhold the requested information pursuant to the following sections of Chapter 552 of the Texas Government Code: 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.108, 552.1081, 552.1085, 552.109, 552.110, 552.111, 552.112, 552.113, 552.114, 552.115, 552.116, 552.117, 552.1175, 552.1176, 552.118, 552.119, 552.120, 552.121, 552.122, 552.123, 552.1235, 552.124, 552.125, 552.126, 552.127, 552.128, 552.129, 552.130, 552.131, 552.132, 552.1325, 552.133, 552.134, 552.135, 552.136, 552.137, 552.138, 552.139, 552.140, 552.141, 552.142, 552.1425, 552.143, 552.144, 552.145, 552.146, 552.147, 552.148, 552.149, 552.150, 552.151, 552.152, 552.153, 552.154, 552.155, and 552.156.

I will forward the requested information and an explanation of the applicability of the exceptions identified within the statutorily-required period of time. Should you have any questions, please do not hesitate to contact me.

Sincerely,



James Kopp
Assistant City Attorney

cc: Byron Miller

Via E- Mail (without enclosures)

Attachment 2

RECEIVED

JUL 17 2018

OPEN RECORDS DIVISION

CITY OF SAN ANTONIO

OFFICE OF THE CITY ATTORNEY
James Kopp, Assistant City Attorney
Phone No.: (210) 207-8992 / Fax No.: (210) 207-6373
Email: james.kopp@sanantonio.gov

Public Safety Headquarters, 315 S. Santa Rosa, 6th Fl.
San Antonio, Texas 78207

July 13, 2018

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729399

Office of the Attorney General
Open Government Section
P.O. Box 12548
Austin, Texas 78711-2548

Via First Class Mail

Re: Request for Ruling
Requestor: Laura Cull
Date request received: July 2, 2018
COSA File No. W221325

Dear Assistant Attorney General:

July 2, 2018, the City of San Antonio received a public information request from Laura Cull, which requested information related to an incident where a San Antonio Police Officer was killed in the line of duty [**Attachment 1**]. July 4th was a city holiday (Independence Day), so city offices were closed. By this Request for a Ruling, the city now submits a representative sample of the records at issue, and legal argument supporting the application of the exceptions claimed [**Attachment 2**].

Arguments and Authorities

Section 552.108(a)(2)(Closed Case, No Conviction)

The requested information is related to a closed criminal investigation. The investigation did not result in a conviction or deferred adjudication. The city believes, then, that the requested information is excepted from required disclosure by section 552.108(a)(2) of the Texas Government Code.

Previous Determination (Body Camera Footage)

The body camera footage which you requested were previously requested by another person, and was submitted to the Texas Attorney General's Office for a ruling. The Attorney General's Office ruled the footage is excepted from disclosure. The opinion of the Attorney General's Office, dated October 18, 2017 under their file number OR2017-23846, is attached to this letter. The law, facts and circumstances on which the ruling of the Attorney General's Office was based have not changed. Therefore, based upon this previous determination that the requested documents are excepted from disclosure, they will not be released pursuant to this request.

Conclusion

For the reasons set forth in this letter, the city seeks a ruling from the Office of the Attorney General to protect the enclosed records from disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Kopp', written over the printed name.

James Kopp
Assistant City Attorney

cc: Laura Cull

Via E- Mail (with AG ruling OR2017-23846 only)



City of San Antonio

Reference Number: W221325-070218

Date Submitted: 7/2/2018 9:21:14 AM

Request Submitted via: Online FOIA Submission

10th day deadline: 7/17/2018 8:00:00 AM

Requestor:

Laura Cull

Arrow International Media LTD

16-17 Margaret Street

London, W1W 8RP

207-489-6236

Information Requested:

Describe the document(s) you are requesting: All materials and documents relating to the Officer Miguel Moreno case, including any body camera footage, dashcam footage, 911 calls, dispatch audio, and police reports.

Attachment 1

W221325-070218 - Police Records Request**Police Records Request Details**

Police Records Request Details

| | | |
|---|--|---|
| I agree to receive the basic public information related to this incident: | Yes | |
| I am requesting a traffic accident report: | No | |
| Describe the document(s) you are requesting: | All materials and documents relating to the Officer Miguel Moreno case, including any body camera footage, dashcam footage, 911 calls, dispatch audio, and police reports. | |
| Preferred Method to Receive Documents: | Electronic by Email | Requestor is responsible for all postage fees. |
| Phone number used to dial 911: | | |
| Date of Incident: | 6/29/2017 | |
| Time of Incident: | 3pm | Please specify AM or PM |
| Location of Incident: | Evergreen Street | Specific address or the highway or street where the incident occurred |
| Incident Case Number: | SAPD17143410 | Please provide the incident case number if known |

****The following section ONLY applies if you are requesting a traffic accident report.***

The San Antonio Police Department must obtain the following information in order to determine if you are entitled to a full and complete crash report in accordance with Texas Transportation Code 550.065 (c)(4), effective 06/18/2015.

Persons or entities not listed under 550.065(c)(4) may only receive a crash report with redactions made in accordance with 550.065(f)(2).

Please select which of the below listed items apply to you in relationship to the crash report you are requesting.
Please be prepared to provide a valid government issued identification card, driver's license, and/or other documentation.

I am the driver or any other person involved in the accident.: No

I am the authorized representative of any person involved in the accident.: No

Please list name of your client

I am the employer, parent, or legal guardian of a driver involved in the accident.: No

Please list name of driver

I am the owner of a vehicle or property damaged in the accident.: No

Please provide basic vehicle or property description

I am a person who has established financial responsibility for a vehicle involved in the accident.: No

I am currently a representative or employee of an insurance company that issued an insurance policy covering a vehicle or any person involved in the accident.: No

I am current a person under contract to provide claims or underwriting information to a person or entity described in the preceding two items.: No

I am currently a representative or employee of a radio station, television, or newspaper.: No

I am a person or entity who may sue because of death resulting from the accident.: No

I do not fall within any of the above categories. I am requesting a redacted crash report.: No

Perjury is a Class A misdemeanor under Texas Penal Code 37.02 and punishable by a fine not to exceed \$4,000, up to a year confinement in jail, or both such fine and confinement.

I agree: I declare under penalty of perjury that the foregoing answers are true and correct.

Internal Information Only:

Coordinator: Linda Flores

Documents Delivered By:

High Profile Request: Yes

Taskforce:

CPA:

Payment Information:

Amount of Payment:

Date Payment Received:

Legal Information:

AG ID Number:

Date Sent to AG:

Exceptions Argued:

AG Ruling Requested:

Cost Estimate Information:

Cost Estimate Letter Amount: \$0.00

Cost Estimate Letter Sent: No